

Introduced by Senator Strickland

February 16, 2010

An act to amend Section 7480 of the Government Code, to amend Section 668 of the Harbors and Navigation Code, to amend Section 11370.2 of the Health and Safety Code, to amend Sections 171b, 171.5, 245.5, 266h, 266i, 273.6, 626.10, 786, 1328d, 1417.6, 11160, 12021, 13540, 13542, and 13821 of, and to repeal Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of, the Penal Code, to amend Section 40000.7 of the Vehicle Code, to amend Sections 12301.6 and 12305.86 of the Welfare and Institutions Code, and to repeal Section 58 of Chapter 28 of the Third Extraordinary Session of the Statutes of 2009, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 1062, as introduced, Strickland. Public safety omnibus bill.

(1) Existing law provides the circumstances in which a local or state government agency may procure the financial records of an individual in the course of a criminal or civil investigation and specifies certain instances where the dissemination of financial records may be required by an order by a judge. Under existing law a court may order the production of relevant records in the possession of a real estate recordholder upon the ex parte application by a peace officer stating the records are relevant to an ongoing felony fraud investigation.

This bill would state that the provisions of existing law regarding the procurement of financial records by the government do not prohibit the production of real estate documents upon the ex parte application of a peace officer during the course of the felony fraud investigation.

(2) Under existing law, persons convicted of specified drug offenses are subject to a separate consecutive 3-year term of imprisonment for each prior conviction of an offense in a list of similar drug offenses.

This bill would expand these lists of drug offenses.

(3) Under existing law it is a crime to bring a taser into a state or local building, into the secure area of an airport, or to a school. Provisions of existing law also impose various penalties for assaulting someone with a taser. Existing law defines the term “less lethal weapon” as any device that is designed to expel less lethal ammunition for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort.

This bill would replace the term “taser” with the term “less lethal weapon” in various provisions of the Penal Code as provided.

(4) Under existing law the pimping of, or the pandering of, a minor is a felony. Existing law imposes a higher triad of sentences if the minor is under 16 years of age than if the minor is over 16 years of age but does not specify the possible sentences if the minor is exactly 16 years of age.

This bill would clarify that if the minor victim is exactly 16 years of age or older, the lower triad of sentences applies.

(5) Existing law makes it a crime to possess a firearm if the person knows he or she is prohibited from doing so by the provisions of specified protective orders.

This bill would apply these provisions to a protective order sought by an officer of a postsecondary educational institution where a student has suffered a credible threat of violence.

(6) Two existing provisions of law both enact the California Community Corrections Performance Incentives Act. One of these provisions includes a victim representative on a local advisory panel created by the act.

This bill would repeal the version of the act that does not include the victim representative in its provisions.

(7) Under existing law, the service of a subpoena by mail or messenger is effected if and when the recipient acknowledges receipt of the subpoena. Under existing law acknowledgment may be made by telephone, mail, or in person.

This bill would include any form of electronic communication as an acceptable means of acknowledging the receipt of a subpoena for purposes of affecting service.

(8) Existing law requires criminal background checks be performed for prospective in-home service providers as a condition of IHSS enrollment. If the applicant or provider is rejected as a result of information contained in the criminal background report, existing law requires that he or she receive a copy of that report from the Department of Justice, that he or she be advised of his or her right to contest the criminal background report, and that he or she be informed of his or her right to submit a claim and proof of indigency for a waiver of the fee for obtaining a copy of a criminal history record.

This bill would provide that if an applicant or provider is rejected as a result of information contained in the criminal background report, the individual shall receive a copy of the Department of Justice criminal offender record information response from the primary response recipient.

(9) This bill would make various technical corrections.

(10) The bill would provide that any section of any other act enacted by the Legislature during the 2010 calendar year that takes effect on or before January 1, 2011, and that affects a provision of this act would prevail over this act.

(11) By expanding the scope of crimes involving the use of a taser to encompass crimes committed with a less lethal weapon, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7480 of the Government Code, as
2 amended by Section 1 of Chapter 234 of the Statutes of 2008, is
3 amended to read:

4 7480. Nothing in this chapter shall prohibit any of the
5 following:

6 (a) The dissemination of any financial information that is not
7 identified with, or identifiable as being derived from, the financial
8 records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) Surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving the account were alleged to have occurred. Nothing in this paragraph does any of the following:

(A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.

(B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.

(8) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account

1 statements prepared in the regular course of business shall be
2 deemed to be in compliance with paragraphs (1), (2), (3), and (4).

3 (c) When any police or sheriff's department or district attorney
4 in this state certifies to a bank, credit union, or savings association
5 in writing that a crime report has been filed that involves the
6 alleged fraudulent use of drafts, checks, access cards, or other
7 orders drawn upon any bank, credit union, or savings association
8 doing business in this state, the police or sheriff's department or
9 district attorney, a county adult protective services office when
10 investigating the financial abuse of an elder or dependent adult,
11 or a long-term care ombudsman when investigating the financial
12 abuse of an elder or dependent adult, may request, with the consent
13 of the accountholder, the bank, credit union, or savings association
14 to furnish, and the bank, credit union, or savings association shall
15 furnish, a statement setting forth the following information with
16 respect to a customer account specified by the requesting party for
17 a period 30 days prior to, and up to 30 days following, the date of
18 occurrence of the alleged illegal act involving the account:

19 (1) The number of items dishonored.

20 (2) The number of items paid that created overdrafts.

21 (3) The dollar volume of the dishonored items and items paid
22 which created overdrafts and a statement explaining any credit
23 arrangement between the bank, credit union, or savings association
24 and customer to pay overdrafts.

25 (4) The dates and amounts of deposits and debits and the account
26 balance on these dates.

27 (5) A copy of the signature card, including the signature and
28 any addresses appearing on a customer's signature card.

29 (6) The date the account opened and, if applicable, the date the
30 account closed.

31 (7) Surveillance photographs and video recordings of persons
32 accessing the crime victim's financial account via an automated
33 teller machine (ATM) or from within the financial institution for
34 dates on which illegal acts involving this account were alleged to
35 have occurred. Nothing in this paragraph does any of the following:

36 (A) Requires a financial institution to produce a photograph or
37 video recording if it does not possess the photograph or video
38 recording.

39 (B) Affects any existing civil immunities as provided in Section
40 47 of the Civil Code or any other provision of law.

(8) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:

(1) Authorization of the disclosure for the period specified in subdivision (c).

(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.

(3) A description of the financial records that are authorized to be disclosed.

(e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

1 (3) A county auditor-controller or director of finance who
2 unlawfully discloses information he or she is authorized to request
3 under this subdivision is guilty of the unlawful disclosure of
4 confidential data, a misdemeanor, which shall be punishable as
5 set forth in Section 7485.

6 (f) The examination by, or disclosure to, any supervisory agency
7 of financial records that relate solely to the exercise of its
8 supervisory function. The scope of an agency's supervisory
9 function shall be determined by reference to statutes that grant
10 authority to examine, audit, or require reports of financial records
11 or financial institutions as follows:

12 (1) With respect to the Commissioner of Financial Institutions
13 by reference to Division 1 (commencing with Section 99), Division
14 1.5 (commencing with Section 4800), Division 2 (commencing
15 with Section 5000), Division 5 (commencing with Section 14000),
16 Division 7 (commencing with Section 18000), Division 15
17 (commencing with Section 31000), and Division 16 (commencing
18 with Section 33000), of the Financial Code.

19 (2) With respect to the Controller by reference to Title 10
20 (commencing with Section 1300) of Part 3 of the Code of Civil
21 Procedure.

22 (3) With respect to the Administrator of Local Agency Security
23 by reference to Article 2 (commencing with Section 53630) of
24 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
25 Code.

26 (g) The disclosure to the Franchise Tax Board of (1) the amount
27 of any security interest that a financial institution has in a specified
28 asset of a customer or (2) financial records in connection with the
29 filing or audit of a tax return or tax information return that are
30 required to be filed by the financial institution pursuant to Part 10
31 (commencing with Section 17001), Part 11 (commencing with
32 Section 23001), or Part 18 (commencing with Section 38001), of
33 the Revenue and Taxation Code.

34 (h) The disclosure to the State Board of Equalization of any of
35 the following:

36 (1) The information required by Sections 6702, 6703, 8954,
37 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
38 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
39 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
40 Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001), of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(k) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(l) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

1 (4) Whenever the request prohibits the disclosure, a financial
2 institution shall not disclose either the request or its response, to
3 an owner of the account or to any other person, except the officers
4 and employees of the financial institution who are involved in
5 responding to the request and to attorneys, employees of the local
6 child support agencies, auditors, and regulatory authorities who
7 have a need to know in order to perform their duties, and except
8 as disclosure may be required by legal process.

9 (5) No financial institution, or any officer, employee, or agent
10 thereof, shall be liable to any person for (A) disclosing information
11 in response to a request pursuant to this subdivision, (B) failing to
12 notify the owner of an account, or complying with a request under
13 this paragraph not to disclose to the owner, the request or disclosure
14 under this subdivision, or (C) failing to discover any account owned
15 by the person named in the request pursuant to a computerized
16 search of the records of the financial institution.

17 (6) The local child support agency may request information
18 pursuant to this subdivision only when the local child support
19 agency has received at least one of the following types of physical
20 evidence:

21 (A) Any of the following, dated within the last three years:

- 22 (i) Form 599.
- 23 (ii) Form 1099.
- 24 (iii) A bank statement.
- 25 (iv) A check.
- 26 (v) A bank passbook.
- 27 (vi) A deposit slip.
- 28 (vii) A copy of a federal or state income tax return.
- 29 (viii) A debit or credit advice.
- 30 (ix) Correspondence that identifies the child support obligor by
31 name, the bank, and the account number.
- 32 (x) Correspondence that identifies the child support obligor by
33 name, the bank, and the banking services related to the account of
34 the obligor.

35 (xi) An asset identification report from a federal agency.

36 (B) A sworn declaration of the custodial parent during the 12
37 months immediately preceding the request that the person named
38 in the request has had or may have had an account at an office or
39 branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(n) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

1 (2) Compliance by a financial institution with the requirements
2 of Section 2893 of the Probate Code.

3 (3) An order by a judge upon a written ex parte application by
4 a peace officer showing specific and articulable facts that there
5 are reasonable grounds to believe that the records or information
6 sought are relevant and material to an ongoing investigation of a
7 felony violation of Section 186.10 or of any felony subject to the
8 enhancement set forth in Section 186.11.

9 (A) The ex parte application shall specify with particularity the
10 records to be produced, which shall be only those of the individual
11 or individuals who are the subject of the criminal investigation.

12 (B) The ex parte application and any subsequent judicial order
13 shall be open to the public as a judicial record unless ordered sealed
14 by the court, for a period of 60 days. The sealing of these records
15 may be extended for 60-day periods upon a showing to the court
16 that it is necessary for the continuance of the investigation.
17 Sixty-day extensions may continue for up to one year or until
18 termination of the investigation of the individual or individuals,
19 whichever is sooner.

20 (C) The records ordered to be produced shall be returned to the
21 peace officer applicant or his or her designee within a reasonable
22 time period after service of the order upon the financial institution.

23 (D) Nothing in this subdivision shall preclude the financial
24 institution from notifying a customer of the receipt of the order
25 for production of records unless a court orders the financial
26 institution to withhold notification to the customer upon a finding
27 that the notice would impede the investigation.

28 (E) Where a court has made an order pursuant to this paragraph
29 to withhold notification to the customer under this paragraph, the
30 peace officer or law enforcement agency who obtained the financial
31 information shall notify the customer by delivering a copy of the
32 ex parte order to the customer within 10 days of the termination
33 of the investigation.

34 (4) *An order by a judge issued pursuant to subdivision (c) of*
35 *Section 532f of the Penal Code.*

36 ~~(4)~~

37 (5) No financial institution, or any officer, employee, or agent
38 thereof, shall be liable to any person for any of the following:

39 (A) Disclosing information to a probate court pursuant to
40 Sections 2892 and 2893.

1 (B) Disclosing information in response to a court order pursuant
2 to paragraph (3).

3 (C) Complying with a court order under this subdivision not to
4 disclose to the customer, the order, or the dissemination of
5 information pursuant to the court order.

6 (o) Disclosure by a financial institution to a peace officer, as
7 defined in Section 830.1 of the Penal Code, pursuant to the
8 following:

9 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the
10 Civil Code, provided that the financial institution has first complied
11 with the requirements of paragraph (2) of subdivision (a) and
12 subdivision (b) of Section 1748.95 of the Civil Code.

13 (2) Paragraph (1) of subdivision (a) of Section 4002 of the
14 Financial Code, provided that the financial institution has first
15 complied with the requirements of paragraph (2) of subdivision
16 (a) and subdivision (b) of Section 4002 of the Financial Code.

17 (3) Paragraph (1) of subdivision (a) of Section 22470 of the
18 Financial Code, provided that any financial institution that is a
19 finance lender has first complied with the requirements of
20 paragraph (2) of subdivision (a) and subdivision (b) of Section
21 22470 of the Financial Code.

22 (p) When the governing board of the Public Employees'
23 Retirement System or the State Teachers' Retirement System
24 certifies in writing to a financial institution that a benefit recipient
25 has died and that transfers to the benefit recipient's account at the
26 financial institution from the retirement system occurred after the
27 benefit recipient's date of death, the financial institution shall
28 furnish the retirement system with the name and address of any
29 coowner, cosigner, or any other person who had access to the funds
30 in the account following the date of the benefit recipient's death,
31 or if the account has been closed, the name and address of the
32 person who closed the account.

33 (q) When the retirement board of a retirement system established
34 under the County Employees Retirement Law of 1937 certifies in
35 writing to a financial institution that a retired member or the
36 beneficiary of a retired member has died and that transfers to the
37 account of the retired member or beneficiary of a retired member
38 at the financial institution from the retirement system occurred
39 after the date of death of the retired member or beneficiary of a
40 retired member, the financial institution shall furnish the retirement

1 system with the name and address of any coowner, cosigner, or
2 any other person who had access to the funds in the account
3 following the date of death of the retired member or beneficiary
4 of a retired member, or if the account has been closed, the name
5 and address of the person who closed the account.

6 (r) When the Franchise Tax Board certifies in writing to a
7 financial institution that (1) a taxpayer filed a tax return that
8 authorized a direct deposit refund with an incorrect financial
9 institution account or routing number that resulted in all or a
10 portion of the refund not being received, directly or indirectly, by
11 the taxpayer; (2) the direct deposit refund was not returned to the
12 Franchise Tax Board; and (3) the refund was deposited directly
13 on a specified date into the account of an accountholder of the
14 financial institution who was not entitled to receive the refund,
15 then the financial institution shall furnish to the Franchise Tax
16 Board the name and address of any coowner, cosigner, or any other
17 person who had access to the funds in the account following the
18 date of direct deposit refund, or if the account has been closed, the
19 name and address of the person who closed the account.

20 SEC. 2. Section 7480 of the Government Code, as amended
21 by Section 2 of Chapter 234 of the Statutes of 2008, is amended
22 to read:

23 7480. Nothing in this chapter prohibits any of the following:

24 (a) The dissemination of any financial information that is not
25 identified with, or identifiable as being derived from, the financial
26 records of a particular customer.

27 (b) When any police or sheriff's department or district attorney
28 in this state certifies to a bank, credit union, or savings association
29 in writing that a crime report has been filed that involves the
30 alleged fraudulent use of drafts, checks, or other orders drawn
31 upon any bank, credit union, or savings association in this state,
32 the police or sheriff's department or district attorney, a county
33 adult protective services office when investigating the financial
34 abuse of an elder or dependent adult, or a long-term care
35 ombudsman when investigating the financial abuse of an elder or
36 dependent adult, may request a bank, credit union, or savings
37 association to furnish, and a bank, credit union, or savings
38 association shall furnish, a statement setting forth the following
39 information with respect to a customer account specified by the
40 requesting party for a period 30 days prior to, and up to 30 days

1 following, the date of occurrence of the alleged illegal act involving
2 the account:

3 (1) The number of items dishonored.

4 (2) The number of items paid that created overdrafts.

5 (3) The dollar volume of the dishonored items and items paid
6 which created overdrafts and a statement explaining any credit
7 arrangement between the bank, credit union, or savings association
8 and customer to pay overdrafts.

9 (4) The dates and amounts of deposits and debits and the account
10 balance on these dates.

11 (5) A copy of the signature card, including the signature and
12 any addresses appearing on a customer's signature card.

13 (6) The date the account opened and, if applicable, the date the
14 account closed.

15 (7) A bank, credit union, or savings association that provides
16 the requesting party with copies of one or more complete account
17 statements prepared in the regular course of business shall be
18 deemed to be in compliance with paragraphs (1), (2), (3), and (4).

19 (c) When any police or sheriff's department or district attorney
20 in this state certifies to a bank, credit union, or savings association
21 in writing that a crime report has been filed that involves the
22 alleged fraudulent use of drafts, checks, or other orders drawn
23 upon any bank, credit union, or savings association doing business
24 in this state, the police or sheriff's department or district attorney,
25 a county adult protective services office when investigating the
26 financial abuse of an elder or dependent adult, or a long-term care
27 ombudsman when investigating the financial abuse of an elder or
28 dependent adult, may request, with the consent of the
29 accountholder, the bank, credit union, or savings association to
30 furnish, and the bank, credit union, or savings association shall
31 furnish, a statement setting forth the following information with
32 respect to a customer account specified by the requesting party for
33 a period 30 days prior to, and up to 30 days following, the date of
34 occurrence of the alleged illegal act involving the account:

35 (1) The number of items dishonored.

36 (2) The number of items paid that created overdrafts.

37 (3) The dollar volume of the dishonored items and items paid
38 which created overdrafts and a statement explaining any credit
39 arrangement between the bank, credit union, or savings association
40 and customer to pay overdrafts.

1 (4) The dates and amounts of deposits and debits and the account
2 balance on these dates.

3 (5) A copy of the signature card, including the signature and
4 any addresses appearing on a customer's signature card.

5 (6) The date the account opened and, if applicable, the date the
6 account closed.

7 (7) A bank, credit union, or savings association doing business
8 in this state that provides the requesting party with copies of one
9 or more complete account statements prepared in the regular course
10 of business shall be deemed to be in compliance with paragraphs
11 (1), (2), (3), and (4).

12 (d) For purposes of subdivision (c), consent of the accountholder
13 shall be satisfied if an accountholder provides to the financial
14 institution and the person or entity seeking disclosure, a signed
15 and dated statement containing all of the following:

16 (1) Authorization of the disclosure for the period specified in
17 subdivision (c).

18 (2) The name of the agency or department to which disclosure
19 is authorized and, if applicable, the statutory purpose for which
20 the information is to be obtained.

21 (3) A description of the financial records that are authorized to
22 be disclosed.

23 (e) (1) The Attorney General, a supervisory agency, the
24 Franchise Tax Board, the State Board of Equalization, the
25 Employment Development Department, the Controller or an
26 inheritance tax referee when administering the Prohibition of Gift
27 and Death Taxes (Part 8 (commencing with Section 13301) of
28 Division 2 of the Revenue and Taxation Code), a police or sheriff's
29 department or district attorney, a county adult protective services
30 office when investigating the financial abuse of an elder or
31 dependent adult, a long-term care ombudsman when investigating
32 the financial abuse of an elder or dependent adult, a county welfare
33 department when investigating welfare fraud, a county
34 auditor-controller or director of finance when investigating fraud
35 against the county, or the Department of Corporations when
36 conducting investigations in connection with the enforcement of
37 laws administered by the Commissioner of Corporations, from
38 requesting of an office or branch of a financial institution, and the
39 office or branch from responding to a request, as to whether a

1 person has an account or accounts at that office or branch and, if
2 so, any identifying numbers of the account or accounts.

3 (2) No additional information beyond that specified in this
4 section shall be released to a county welfare department without
5 either the accountholder's written consent or a judicial writ, search
6 warrant, subpoena, or other judicial order.

7 (3) A county auditor-controller or director of finance who
8 unlawfully discloses information he or she is authorized to request
9 under this subdivision is guilty of the unlawful disclosure of
10 confidential data, a misdemeanor, which shall be punishable as
11 set forth in Section 7485.

12 (f) The examination by, or disclosure to, any supervisory agency
13 of financial records that relate solely to the exercise of its
14 supervisory function. The scope of an agency's supervisory
15 function shall be determined by reference to statutes that grant
16 authority to examine, audit, or require reports of financial records
17 or financial institutions as follows:

18 (1) With respect to the Commissioner of Financial Institutions
19 by reference to Division 1 (commencing with Section 99), Division
20 1.5 (commencing with Section 4800), Division 2 (commencing
21 with Section 5000), Division 5 (commencing with Section 14000),
22 Division 7 (commencing with Section 18000), Division 15
23 (commencing with Section 31000), and Division 16 (commencing
24 with Section 33000) of the Financial Code.

25 (2) With respect to the Controller by reference to Title 10
26 (commencing with Section 1300) of Part 3 of the Code of Civil
27 Procedure.

28 (3) With respect to the Administrator of Local Agency Security
29 by reference to Article 2 (commencing with Section 53630) of
30 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
31 Code.

32 (g) The disclosure to the Franchise Tax Board of (1) the amount
33 of any security interest that a financial institution has in a specified
34 asset of a customer or (2) financial records in connection with the
35 filing or audit of a tax return or tax information return that are
36 required to be filed by the financial institution pursuant to Part 10
37 (commencing with Section 17001), Part 11 (commencing with
38 Section 23001), or Part 18 (commencing with Section 38001) of
39 the Revenue and Taxation Code.

1 (h) The disclosure to the State Board of Equalization of any of
2 the following:

3 (1) The information required by Sections 6702, 6703, 8954,
4 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
5 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
6 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
7 Revenue and Taxation Code.

8 (2) The financial records in connection with the filing or audit
9 of a tax return required to be filed by the financial institution
10 pursuant to Part 1 (commencing with Section 6001), Part 2
11 (commencing with Section 7301), Part 3 (commencing with Section
12 8601), Part 13 (commencing with Section 30001), Part 14
13 (commencing with Section 32001), and Part 17 (commencing with
14 Section 37001) of Division 2 of the Revenue and Taxation Code.

15 (3) The amount of any security interest a financial institution
16 has in a specified asset of a customer, if the inquiry is directed to
17 the branch or office where the interest is held.

18 (i) The disclosure to the Controller of the information required
19 by Section 7853 of the Revenue and Taxation Code.

20 (j) The disclosure to the Employment Development Department
21 of the amount of any security interest a financial institution has in
22 a specified asset of a customer, if the inquiry is directed to the
23 branch or office where the interest is held.

24 (k) The disclosure by a construction lender, as defined in Section
25 3087 of the Civil Code, to the Registrar of Contractors, of
26 information concerning the making of progress payments to a
27 prime contractor requested by the registrar in connection with an
28 investigation under Section 7108.5 of the Business and Professions
29 Code.

30 (l) Upon receipt of a written request from a local child support
31 agency referring to a support order pursuant to Section 17400 of
32 the Family Code, a financial institution shall disclose the following
33 information concerning the account or the person named in the
34 request, whom the local child support agency shall identify,
35 whenever possible, by social security number:

36 (1) If the request states the identifying number of an account at
37 a financial institution, the name of each owner of the account.

38 (2) Each account maintained by the person at the branch to
39 which the request is delivered, and, if the branch is able to make

1 a computerized search, each account maintained by the person at
2 any other branch of the financial institution located in this state.

3 (3) For each account disclosed pursuant to paragraphs (1) and
4 (2), the account number, current balance, street address of the
5 branch where the account is maintained, and, to the extent available
6 through the branch's computerized search, the name and address
7 of any other person listed as an owner.

8 (4) Whenever the request prohibits the disclosure, a financial
9 institution shall not disclose either the request or its response, to
10 an owner of the account or to any other person, except the officers
11 and employees of the financial institution who are involved in
12 responding to the request and to attorneys, employees of the local
13 child support agencies, auditors, and regulatory authorities who
14 have a need to know in order to perform their duties, and except
15 as disclosure may be required by legal process.

16 (5) No financial institution, or any officer, employee, or agent
17 thereof, shall be liable to any person for (A) disclosing information
18 in response to a request pursuant to this subdivision, (B) failing to
19 notify the owner of an account, or complying with a request under
20 this paragraph not to disclose to the owner, the request or disclosure
21 under this subdivision, or (C) failing to discover any account owned
22 by the person named in the request pursuant to a computerized
23 search of the records of the financial institution.

24 (6) The local child support agency may request information
25 pursuant to this subdivision only when the local child support
26 agency has received at least one of the following types of physical
27 evidence:

28 (A) Any of the following, dated within the last three years:

29 (i) Form 599.

30 (ii) Form 1099.

31 (iii) A bank statement.

32 (iv) A check.

33 (v) A bank passbook.

34 (vi) A deposit slip.

35 (vii) A copy of a federal or state income tax return.

36 (viii) A debit or credit advice.

37 (ix) Correspondence that identifies the child support obligor by
38 name, the bank, and the account number.

1 (x) Correspondence that identifies the child support obligor by
2 name, the bank, and the banking services related to the account of
3 the obligor.

4 (xi) An asset identification report from a federal agency.

5 (B) A sworn declaration of the custodial parent during the 12
6 months immediately preceding the request that the person named
7 in the request has had or may have had an account at an office or
8 branch of the financial institution to which the request is made.

9 (7) Information obtained by a local child support agency
10 pursuant to this subdivision shall be used only for purposes that
11 are directly connected with the administration of the duties of the
12 local child support agency pursuant to Section 17400 of the Family
13 Code.

14 (m) (1) As provided in paragraph (1) of subdivision (c) of
15 Section 666 of Title 42 of the United States Code, upon receipt of
16 an administrative subpoena on the current federally approved
17 interstate child support enforcement form, as approved by the
18 federal Office of Management and Budget, a financial institution
19 shall provide the information or documents requested by the
20 administrative subpoena.

21 (2) The administrative subpoena shall refer to the current federal
22 Office of Management and Budget control number and be signed
23 by a person who states that he or she is an authorized agent of a
24 state or county agency responsible for implementing the child
25 support enforcement program set forth in Part D (commencing
26 with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the
27 United States Code. A financial institution may rely on the
28 statements made in the subpoena and has no duty to inquire into
29 the truth of any statement in the subpoena.

30 (3) If the person who signs the administrative subpoena directs
31 a financial institution in writing not to disclose either the subpoena
32 or its response to any owner of an account covered by the subpoena,
33 the financial institution shall not disclose the subpoena or its
34 response to the owner.

35 (4) No financial institution, or any officer, employee, or agent
36 thereof, shall be liable to any person for (A) disclosing information
37 or providing documents in response to a subpoena pursuant to this
38 subdivision, (B) failing to notify any owner of an account covered
39 by the subpoena or complying with a request not to disclose to the
40 owner, the subpoena or disclosure under this subdivision, or (C)

1 failing to discover any account owned by the person named in the
2 subpoena pursuant to a computerized search of the records of the
3 financial institution.

4 (n) The dissemination of financial information and records
5 pursuant to any of the following:

6 (1) Compliance by a financial institution with the requirements
7 of Section 2892 of the Probate Code.

8 (2) Compliance by a financial institution with the requirements
9 of Section 2893 of the Probate Code.

10 (3) An order by a judge upon a written ex parte application by
11 a peace officer showing specific and articulable facts that there
12 are reasonable grounds to believe that the records or information
13 sought are relevant and material to an ongoing investigation of a
14 felony violation of Section 186.10 or of any felony subject to the
15 enhancement set forth in Section 186.11.

16 (A) The ex parte application shall specify with particularity the
17 records to be produced, which shall be only those of the individual
18 or individuals who are the subject of the criminal investigation.

19 (B) The ex parte application and any subsequent judicial order
20 shall be open to the public as a judicial record unless ordered sealed
21 by the court, for a period of 60 days. The sealing of these records
22 may be extended for 60-day periods upon a showing to the court
23 that it is necessary for the continuance of the investigation.
24 Sixty-day extensions may continue for up to one year or until
25 termination of the investigation of the individual or individuals,
26 whichever is sooner.

27 (C) The records ordered to be produced shall be returned to the
28 peace officer applicant or his or her designee within a reasonable
29 time period after service of the order upon the financial institution.

30 (D) Nothing in this subdivision shall preclude the financial
31 institution from notifying a customer of the receipt of the order
32 for production of records unless a court orders the financial
33 institution to withhold notification to the customer upon a finding
34 that the notice would impede the investigation.

35 (E) Where a court has made an order pursuant to this paragraph
36 to withhold notification to the customer under this paragraph, the
37 peace officer or law enforcement agency who obtained the financial
38 information shall notify the customer by delivering a copy of the
39 ex parte order to the customer within 10 days of the termination
40 of the investigation.

1 (4) *An order by a judge issued pursuant to subdivision (c) of*
2 *Section 532f of the Penal Code.*

3 ~~(4)~~

4 (5) No financial institution, or any officer, employee, or agent
5 thereof, shall be liable to any person for any of the following:

6 (A) Disclosing information to a probate court pursuant to
7 Sections 2892 and 2893.

8 (B) Disclosing information in response to a court order pursuant
9 to paragraph (3).

10 (C) Complying with a court order under this subdivision not to
11 disclose to the customer, the order, or the dissemination of
12 information pursuant to the court order.

13 (o) Disclosure by a financial institution to a peace officer, as
14 defined in Section 830.1 of the Penal Code, pursuant to the
15 following:

16 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the
17 Civil Code, provided that the financial institution has first complied
18 with the requirements of paragraph (2) of subdivision (a) and
19 subdivision (b) of Section 1748.95 of the Civil Code.

20 (2) Paragraph (1) of subdivision (a) of Section 4002 of the
21 Financial Code, provided that the financial institution has first
22 complied with the requirements of paragraph (2) of subdivision
23 (a) and subdivision (b) of Section 4002 of the Financial Code.

24 (3) Paragraph (1) of subdivision (a) of Section 22470 of the
25 Financial Code, provided that any financial institution that is a
26 finance lender has first complied with the requirements of
27 paragraph (2) of subdivision (a) and subdivision (b) of Section
28 22470 of the Financial Code.

29 (p) When the governing board of the Public Employees'
30 Retirement System or the State Teachers' Retirement System
31 certifies in writing to a financial institution that a benefit recipient
32 has died and that transfers to the benefit recipient's account at the
33 financial institution from the retirement system occurred after the
34 benefit recipient's date of death, the financial institution shall
35 furnish the retirement system the name and address of any coowner,
36 cosigner, or any other person who had access to the funds in the
37 account following the date of the benefit recipient's death, or if
38 the account has been closed, the name and address of the person
39 who closed the account.

(q) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.

(r) When the Franchise Tax Board certifies in writing to a financial institution that (1) a taxpayer filed a tax return that authorized a direct deposit refund with an incorrect financial institution account or routing number that resulted in all or a portion of the refund not being received, directly or indirectly, by the taxpayer; (2) the direct deposit refund was not returned to the Franchise Tax Board; and (3) the refund was deposited directly on a specified date into the account of an accountholder of the financial institution who was not entitled to receive the refund, then the financial institution shall furnish to the Franchise Tax Board the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of direct deposit refund, or if the account has been closed, the name and address of the person who closed the account.

(s) This section shall become operative on January 1, 2013.

SEC. 3. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars (\$250).

(b) (1) Any person who violates Section 655.2, or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor and shall be punished by a fine of not more than

1 one hundred dollars (\$100) or imprisonment in the county jail for
2 not more than five days, or by both that fine and imprisonment,
3 for each violation.

4 (2) Any person who violates subdivision (a) or (b) of Section
5 658 is guilty of a misdemeanor and shall be punished by a fine of
6 not more than two hundred dollars (\$200) for each violation.

7 (3) Any person who violates subdivision (d) of Section 652,
8 Section 652.5, subdivision (a) of Section 655, Section 655.05, 656,
9 or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or
10 665, or any rules and regulations adopted pursuant to subdivision
11 (b) or (c) of Section 660, is guilty of a misdemeanor and shall be
12 punished by a fine of not more than one thousand dollars (\$1,000)
13 or imprisonment in the county jail for not more than six months,
14 or by both that fine and imprisonment, for each violation.

15 (c) (1) Any person convicted of a violation of Section 656.2 or
16 656.3 shall be punished by a fine of not less than one thousand
17 dollars (\$1,000) or more than ten thousand dollars (\$10,000), or
18 by imprisonment in the state prison or in the county jail for not
19 more than one year, or by both that fine and imprisonment.

20 (2) In imposing the minimum fine required by this subdivision,
21 the court shall take into consideration the defendant's ability to
22 pay the fine and, in the interest of justice for reasons stated in the
23 record, may reduce the amount of that minimum fine to less than
24 the amount otherwise required by this subdivision.

25 (d) Any person convicted of a violation of Section 658.5 shall
26 be punished by a fine of not more than one hundred dollars (\$100).

27 (e) Any person convicted of a first violation of subdivision (b),
28 (c), (d), or (e) of Section 655, or of a violation of Section 655.4,
29 shall be punished by a fine of not more than one thousand dollars
30 (\$1,000) or imprisonment in the county jail for not more than six
31 months, or by both that fine and imprisonment. If probation is
32 granted, the court, as a condition of probation, may require the
33 person to participate in, and successfully complete, an alcohol or
34 drug education, training, or treatment program, in addition to
35 imposing any penalties required by this code. In order to enable
36 all persons to participate in licensed programs, every person
37 referred to a program licensed pursuant to Section 11836 of the
38 Health and Safety Code shall pay that program's costs
39 commensurate with that person's ability to pay as determined by
40 Section 11837.4 of the Health and Safety Code.

1 (f) Any person convicted of a second or subsequent violation
2 of subdivision (b), (c), (d), or (e) of Section 655 within seven years
3 of the first conviction of any of those subdivisions or subdivision
4 (f) of Section 655, or any person convicted of a violation of
5 subdivision (b), (c), (d), or (e) of Section 655 within seven years
6 of a separate conviction of subdivision (a) or (b) of Section 192.5
7 of the Penal Code, or a separate conviction of Section 23152 or
8 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of
9 Section 192.5 of the Penal Code, when the separate conviction
10 resulted from the operation of a motor vehicle, shall be punished
11 by a fine of not more than one thousand dollars (\$1,000) or
12 imprisonment in the county jail for not more than one year, or by
13 both that fine and imprisonment. If probation is granted, the court,
14 as a condition of probation, may require the person to do either of
15 the following, if available in the county of the person's residence
16 or employment:

17 (1) Participate, for at least 18 months subsequent to the
18 underlying conviction and in a manner satisfactory to the court,
19 in a program licensed pursuant to Chapter 9 (commencing with
20 Section 11836) of Part 2 of Division 10.5 of the Health and Safety
21 Code, as designated by the court. In order to enable all required
22 persons to participate, each person shall pay the program costs
23 commensurate with the person's ability to pay as determined
24 pursuant to Section 11837.4 of the Health and Safety Code.

25 (2) Participate, for at least 30 months subsequent to the
26 underlying conviction and in a manner satisfactory to the court,
27 in a program licensed pursuant to Chapter 9 (commencing with
28 Section 11836) of Part 2 of Division 10.5 of the Health and Safety
29 Code. A person ordered to treatment pursuant to this paragraph
30 shall apply to the court or to a board of review, as designated by
31 the court, at the conclusion of the program to obtain the court's
32 order of satisfaction. Only upon the granting of that order of
33 satisfaction by the court may the program issue its certificate of
34 successful completion. A failure to obtain an order of satisfaction
35 at the conclusion of the program is a violation of probation. In
36 order to enable all required persons to participate, each person
37 shall pay the program costs commensurate with the person's ability
38 to pay as determined pursuant to Section 11837.4 of the Health
39 and Safety Code. No condition of probation required pursuant to

1 this paragraph is a basis for reducing any other probation
2 requirement.

3 (g) Any person convicted of a violation of subdivision (f) of
4 Section 655 shall be punished by imprisonment in the state prison,
5 or in the county jail for not less than 90 days or more than one
6 year, and by a fine of not less than two hundred fifty dollars (\$250)
7 or more than five thousand dollars (\$5,000). If probation is granted,
8 the court, as a condition of probation, may require the person to
9 participate in, and successfully complete, a program licensed
10 pursuant to Chapter 9 (commencing with Section 11836) of Part
11 2 of Division 10.5 of the Health and Safety Code, if available in
12 the person's county of residence or employment, as designated by
13 the court. In order to enable all required persons to participate,
14 each person shall pay the program costs commensurate with the
15 person's ability to pay as determined pursuant to Section 11837.4
16 of the Health and Safety Code.

17 (h) (1) If any person is convicted of a violation of subdivision
18 (f) of Section 655 within seven years of a separate conviction of
19 a violation of subdivision (b), (c), (d), or (e) of Section 655 and is
20 granted probation, the court shall impose as a condition of
21 probation that the person be confined in the county jail for not less
22 than five days or more than one year and pay a fine of not less than
23 two hundred fifty dollars (\$250) or more than five thousand dollars
24 (\$5,000).

25 (2) If any person is convicted of a violation of subdivision (f)
26 of Section 655 within seven years of a separate conviction of a
27 violation of subdivision (f) of Section 655, of subdivision (a) or
28 (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153
29 of the Vehicle Code or Section 191.5 or subdivision (a) of Section
30 192.5 of the Penal Code, when the separate conviction resulted
31 from the operation of a motor vehicle, and is granted probation,
32 the court shall impose as a condition of probation that the person
33 be confined in the county jail for not less than 90 days or more
34 than one year, and pay a fine of not less than two hundred fifty
35 dollars (\$250) or more than five thousand dollars (\$5,000), and
36 the court, as a condition of probation, may order that the person
37 participate in a manner satisfactory to the court, in a program
38 licensed pursuant to Chapter 9 (commencing with Section 11836)
39 of Part 2 of Division 10.5 of the Health and Safety Code, if
40 available in the county of the person's residence or employment.

1 In order to enable all required persons to participate, each person
2 shall pay the program costs commensurate with the person's ability
3 to pay as determined pursuant to Section 11837.4 of the Health
4 and Safety Code.

5 (i) The court shall not absolve a person who is convicted of a
6 violation of subdivision (f) of Section 655 within seven years of
7 a separate conviction of a violation of subdivision (b), (c), (d), (e),
8 or (f) of Section 655, of subdivision (a) or (b) of Section 192.5 of
9 the Penal Code, or Section 23152 or 23153 of the Vehicle Code
10 or Section 191.5 or subdivision (a) of Section 192.5 of the Penal
11 Code, when the separate conviction resulted from the operation
12 of a motor vehicle, from the minimum time in confinement
13 provided in this section and a fine of at least two hundred fifty
14 dollars (\$250), except as provided in subdivision (h).

15 (j) Except in unusual cases where the interests of justice demand
16 an exception, the court shall not strike a separate conviction of an
17 offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or
18 of subdivision (a) or (b) of Section 192.5 of the Penal Code, or
19 Section 23152 or 23153 of the Vehicle Code or Section 191.5 or
20 subdivision (a) of Section 192.5 of the Penal Code, when the
21 separate conviction resulted from the operation of a motor vehicle,
22 for purposes of sentencing in order to avoid imposing, as part of
23 the sentence or as a term of probation, the minimum time in
24 confinement and the minimum fine, as provided in this section.
25 When a separate conviction is stricken by the court for purposes
26 of sentencing, the court shall specify the reason or reasons for the
27 striking order. On appeal by the people from an order striking a
28 separate conviction, it shall be conclusively presumed that the
29 order was made only for the reasons specified in the order, and
30 the order shall be reversed if there is no substantial basis in the
31 record for any of those reasons.

32 (k) A person who flees the scene of the crime after committing
33 a violation of ~~Section 191.5 or paragraph (1) of subdivision (e) of~~
34 ~~Section 192~~ *subdivision (a), (b), or (c) of Section 192.5* of the
35 Penal Code shall be subject to subdivision (c) of Section 20001 of
36 the Vehicle Code.

37 (l) Any person who violates Section 654.3 is guilty of an
38 infraction punishable by a fine of not more than five hundred
39 dollars (\$500) for each separate violation.

1 SEC. 4. Section 11370.2 of the Health and Safety Code is
2 amended to read:

3 11370.2. (a) Any person convicted of a violation of, or of a
4 conspiracy to violate, Section 11351, 11351.5, or 11352 shall
5 receive, in addition to any other punishment authorized by law,
6 including Section 667.5 of the Penal Code, a full, separate, and
7 consecutive three-year term for each prior felony conviction of,
8 or for each prior felony conviction of conspiracy to violate, Section
9 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6,
10 11380, 11380.5, ~~or~~ 11383, *11383.5, 11383.6, or 11383.7*, whether
11 or not the prior conviction resulted in a term of imprisonment.

12 (b) Any person convicted of a violation of, or of a conspiracy
13 to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, ~~or~~ 11383,
14 *11383.5, 11383.6, or 11383.7* shall receive, in addition to any other
15 punishment authorized by law, including Section 667.5 of the
16 Penal Code, a full, separate, and consecutive three-year term for
17 each prior felony conviction of, or for each prior felony conviction
18 of conspiracy to violate, Section 11351, 11351.5, 11352, 11378,
19 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, ~~or~~ 11383,
20 *11383.5, 11383.6, or 11383.7*, whether or not the prior conviction
21 resulted in a term of imprisonment.

22 (c) Any person convicted of a violation of, or of a conspiracy
23 to violate, Section 11378 or 11379 with respect to any substance
24 containing a controlled substance specified in paragraph (1) or (2)
25 of subdivision (d) of Section 11055 shall receive, in addition to
26 any other punishment authorized by law, including Section 667.5
27 of the Penal Code, a full, separate, and consecutive three-year term
28 for each prior felony conviction of, or for each prior felony
29 conviction of conspiracy to violate, Section 11351, 11351.5, 11352,
30 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, ~~or~~
31 11383, *11383.5, 11383.6, or 11383.7*, whether or not the prior
32 conviction resulted in a term of imprisonment.

33 (d) The enhancements provided for in this section shall be
34 pleaded and proven as provided by law.

35 (e) The conspiracy enhancements provided for in this section
36 shall not be imposed unless the trier of fact finds that the defendant
37 conspirator was substantially involved in the planning, direction,
38 execution, or financing of the underlying offense.

39 (f) Prior convictions from another jurisdiction qualify for use
40 under this section pursuant to Section 668.

1 SEC. 5. Section 171b of the Penal Code is amended to read:

2 171b. (a) Any person who brings or possesses within any state
3 or local public building or at any meeting required to be open to
4 the public pursuant to Chapter 9 (commencing with Section 54950)
5 of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing
6 with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title
7 2 of, the Government Code, any of the following is guilty of a
8 public offense punishable by imprisonment in a county jail for not
9 more than one year, or in the state prison:

10 (1) Any firearm.

11 (2) Any deadly weapon described in Section 653k or 12020.

12 (3) Any knife with a blade length in excess of four inches, the
13 blade of which is fixed or is capable of being fixed in an unguarded
14 position by the use of one or two hands.

15 (4) Any unauthorized tear gas weapon.

16 (5) Any ~~taser~~ *less lethal weapon, as defined in Section 12601,*
17 or stun gun, as defined in Section 244.5.

18 (6) Any instrument that expels a metallic projectile, such as a
19 BB or pellet, through the force of air pressure, CO₂ pressure, or
20 spring action, or any spot marker gun or paint gun.

21 (b) Subdivision (a) shall not apply to, or affect, any of the
22 following:

23 (1) A person who possesses weapons in, or transports weapons
24 into, a court of law to be used as evidence.

25 (2) (A) A duly appointed peace officer as defined in Chapter
26 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired
27 peace officer with authorization to carry concealed weapons as
28 described in subdivision (a) of Section 12027, a full-time paid
29 peace officer of another state or the federal government who is
30 carrying out official duties while in California, or any person
31 summoned by any of these officers to assist in making arrests or
32 preserving the peace while he or she is actually engaged in assisting
33 the officer.

34 (B) Notwithstanding subparagraph (A), subdivision (a) shall
35 apply to any person who brings or possesses any weapon specified
36 therein within any courtroom if he or she is a party to an action
37 pending before the court.

38 (3) A person holding a valid license to carry the firearm pursuant
39 to Article 3 (commencing with Section 12050) of Chapter 1 of
40 Title 2 of Part 4.

1 (4) A person who has permission to possess that weapon granted
2 in writing by a duly authorized official who is in charge of the
3 security of the state or local government building.

4 (5) A person who lawfully resides in, lawfully owns, or is in
5 lawful possession of, that building with respect to those portions
6 of the building that are not owned or leased by the state or local
7 government.

8 (6) A person licensed or registered in accordance with, and
9 acting within the course and scope of, Chapter 11.5 (commencing
10 with Section 7512) or Chapter 11.6 (commencing with Section
11 7590) of Division 3 of the Business and Professions Code who
12 has been hired by the owner or manager of the building if the
13 person has permission pursuant to paragraph (5).

14 (7) (A) A person who, for the purpose of sale or trade, brings
15 any weapon that may otherwise be lawfully transferred, into a gun
16 show conducted pursuant to Sections 12071.1 and 12071.4.

17 (B) A person who, for purposes of an authorized public
18 exhibition, brings any weapon that may otherwise be lawfully
19 possessed, into a gun show conducted pursuant to Sections 12071.1
20 and 12071.4.

21 (c) As used in this section, “state or local public building” means
22 a building that meets all of the following criteria:

23 (1) It is a building or part of a building owned or leased by the
24 state or local government, if state or local public employees are
25 regularly present for the purposes of performing their official
26 duties. A state or local public building includes, but is not limited
27 to, a building that contains a courtroom.

28 (2) It is not a building or facility, or a part thereof, that is referred
29 to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code, or
30 in Section 18544 of the Elections Code.

31 (3) It is a building not regularly used, and not intended to be
32 used, by state or local employees as a place of residence.

33 SEC. 6. Section 171.5 of the Penal Code is amended to read:
34 171.5. (a) For purposes of this section:

35 (1) “Airport” means an airport, with a secured area, that
36 regularly serves an air carrier holding a certificate issued by the
37 United States Secretary of Transportation.

38 (2) “Passenger vessel terminal” means only that portion of a
39 harbor or port facility, as described in Section 105.105(a)(2) of

1 Title 33 of the Code of Federal Regulations, with a secured area
2 that regularly serves scheduled commuter or passenger operations.

3 (3) “Sterile area” means a portion of an airport defined in the
4 airport security program to which access generally is controlled
5 through the screening of persons and property, as specified in
6 Section 1540.5 of Title 49 of the Code of Federal Regulations, or
7 a portion of any passenger vessel terminal to which, pursuant to
8 the requirements set forth in Sections 105.255(a)(1), 105.255(c)(1),
9 and 105.260(a) of Title 33 of the Code of Federal Regulations,
10 access is generally controlled in a manner consistent with the
11 passenger vessel terminal’s security plan and the MARSEC level
12 in effect at the time.

13 (b) It is unlawful for any person to knowingly possess, within
14 any sterile area of an airport or a passenger vessel terminal, any
15 of the items listed in subdivision (c).

16 (c) The following items are unlawful to possess as provided in
17 subdivision (b):

18 (1) Any firearm.

19 (2) Any knife with a blade length in excess of four inches, the
20 blade of which is fixed, or is capable of being fixed, in an
21 unguarded position by the use of one or two hands.

22 (3) Any box cutter or straight razor.

23 (4) Any metal military practice hand grenade.

24 (5) Any metal replica hand grenade.

25 (6) Any plastic replica hand grenade.

26 (7) Any imitation firearm as defined in Section 417.4.

27 (8) Any frame, receiver, barrel, or magazine of a firearm.

28 (9) Any unauthorized tear gas weapon.

29 (10) Any ~~taser~~ *less lethal weapon, as defined in Section 12601,*
30 or stun gun, as defined in Section 244.5.

31 (11) Any instrument that expels a metallic projectile, such as a
32 BB or pellet, through the force of air pressure, CO₂ pressure, or
33 spring action, or any spot marker gun or paint gun.

34 (12) Any ammunition as defined in Section 12316.

35 (d) Subdivision (b) shall not apply to, or affect, any of the
36 following:

37 (1) A duly appointed peace officer, as defined in Chapter 4.5
38 (commencing with Section 830) of Title 3 of Part 2, a retired peace
39 officer with authorization to carry concealed weapons as described
40 in subdivision (a) of Section 12027, a full-time paid peace officer

1 of another state or the federal government who is carrying out
2 official duties while in California, or any person summoned by
3 any of these officers to assist in making arrests or preserving the
4 peace while he or she is actually engaged in assisting the officer.

5 (2) A person who has authorization to possess a weapon
6 specified in subdivision (c), granted in writing by an airport
7 security coordinator who is designated as specified in Section
8 1542.3 of Title 49 of the Code of Federal Regulations, and who is
9 responsible for the security of the airport.

10 (3) A person, including an employee of a licensed contract guard
11 service, who has authorization to possess a weapon specified in
12 subdivision (c) granted in writing by a person discharging the
13 duties of Facility Security Officer or Company Security Officer
14 pursuant to an approved United States Coast Guard facility security
15 plan, and who is responsible for the security of the passenger vessel
16 terminal.

17 (e) A violation of this section is punishable by imprisonment
18 in a county jail for a period not exceeding six months, or by a fine
19 not exceeding one thousand dollars (\$1,000), or by both that fine
20 and imprisonment.

21 (f) The provisions of this section are cumulative, and shall not
22 be construed as restricting the application of any other law.
23 However, an act or omission that is punishable in different ways
24 by this and any other provision of law shall not be punished under
25 more than one provision.

26 (g) Nothing in this section is intended to affect existing state or
27 federal law regarding the transportation of firearms on airplanes
28 in checked luggage, or the possession of the items listed in
29 subdivision (c) in areas that are not “sterile areas.”

30 SEC. 7. Section 245.5 of the Penal Code is amended to read:

31 245.5. (a) Every person who commits an assault with a deadly
32 weapon or instrument, other than a firearm, or by any means likely
33 to produce great bodily injury upon the person of a school
34 employee, and who knows or reasonably should know that the
35 victim is a school employee engaged in the performance of his or
36 her duties, when that school employee is engaged in the
37 performance of his or her duties, shall be punished by
38 imprisonment in the state prison for three, four, or five years, or
39 in a county jail not exceeding one year.

(b) Every person who commits an assault with a firearm upon the person of a school employee, and who knows or reasonably should know that the victim is a school employee engaged in the performance of his or her duties, when the school employee is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years, or in a county jail for not less than six months and not exceeding one year.

(c) Every person who commits an assault upon the person of a school employee with a *less lethal weapon, as defined in Section 12601, or a stun gun or taser, as defined in Section 244.5*, and who knows or reasonably should know that the person is a school employee engaged in the performance of his or her duties, when the school employee is engaged in the performance of his or her duties, shall be punished by imprisonment in a county jail for a term not exceeding one year or by imprisonment in the state prison for two, three, or four years.

This subdivision shall not be construed to preclude or in any way limit the applicability of Section 245 in any criminal prosecution.

(d) As used in the section, “school employee” means any person employed as a permanent or probationary certificated or classified employee of a school district on a part-time or full-time basis, including a substitute teacher. “School employee,” as used in this section, also includes a student teacher, or a school board member. “School,” as used in this section, has the same meaning as that term is defined in Section 626.

SEC. 8. Section 266h of the Penal Code is amended to read:

266h. (a) Except as provided in subdivision (b), any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person’s prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years.

(b) Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from

1 the earnings or proceeds of the person's prostitution, or from
2 money loaned or advanced to or charged against that person by
3 any keeper or manager or inmate of a house or other place where
4 prostitution is practiced or allowed, or who solicits or receives
5 compensation for soliciting for the person, when the prostitute is
6 a minor, is guilty of pimping a minor, a felony, and shall be
7 punishable as follows:

8 (1) If the person engaged in prostitution is a minor ~~over the age~~
9 ~~of~~ 16 years *of age or older*, the offense is punishable by
10 imprisonment in the state prison for three, four, or six years.

11 (2) If the person engaged in prostitution is under 16 years of
12 age, the offense is punishable by imprisonment in the state prison
13 for three, six, or eight years.

14 SEC. 9. Section 266i of the Penal Code is amended to read:

15 266i. (a) Except as provided in subdivision (b), any person
16 who does any of the following is guilty of pandering, a felony, and
17 shall be punishable by imprisonment in the state prison for three,
18 four, or six years:

19 (1) Procures another person for the purpose of prostitution.

20 (2) By promises, threats, violence, or by any device or scheme,
21 causes, induces, persuades or encourages another person to become
22 a prostitute.

23 (3) Procures for another person a place as an inmate in a house
24 of prostitution or as an inmate of any place in which prostitution
25 is encouraged or allowed within this state.

26 (4) By promises, threats, violence or by any device or scheme,
27 causes, induces, persuades or encourages an inmate of a house of
28 prostitution, or any other place in which prostitution is encouraged
29 or allowed, to remain therein as an inmate.

30 (5) By fraud or artifice, or by duress of person or goods, or by
31 abuse of any position of confidence or authority, procures another
32 person for the purpose of prostitution, or to enter any place in
33 which prostitution is encouraged or allowed within this state, or
34 to come into this state or leave this state for the purpose of
35 prostitution.

36 (6) Receives or gives, or agrees to receive or give, any money
37 or thing of value for procuring, or attempting to procure, another
38 person for the purpose of prostitution, or to come into this state or
39 leave this state for the purpose of prostitution.

(b) Any person who does any of the acts described in subdivision (a) with another person who is a minor is guilty of pandering, a felony, and shall be punishable as follows:

(1) If the other person is a minor ~~over the age of~~ 16 years *of age or older*, the offense is punishable by imprisonment in the state prison for three, four, or six years.

(2) If the other person is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

SEC. 10. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) that results in physical injury, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

1 (3) An order enjoining a party from specified behavior that the
2 court determined was necessary to effectuate the order described
3 in subdivision (a).

4 (4) Any order issued by another state that is recognized under
5 Part 5 (commencing with Section 6400) of Division 10 of the
6 Family Code.

7 (d) A subsequent conviction for a violation of an order described
8 in subdivision (a), occurring within seven years of a prior
9 conviction for a violation of an order described in subdivision (a)
10 and involving an act of violence or “a credible threat” of violence,
11 as defined in subdivision (c) of Section 139, is punishable by
12 imprisonment in a county jail not to exceed one year, or in the
13 state prison.

14 (e) In the event of a subsequent conviction for a violation of an
15 order described in subdivision (a) for an act occurring within one
16 year of a prior conviction for a violation of an order described in
17 subdivision (a) that results in physical injury to a victim, the person
18 shall be punished by a fine of not more than two thousand dollars
19 (\$2,000), or by imprisonment in a county jail for not less than six
20 months nor more than one year, by both that fine and
21 imprisonment, or by imprisonment in the state prison. However,
22 if the person is imprisoned in a county jail for at least 30 days, the
23 court may, in the interest of justice and for reasons stated in the
24 record, reduce or eliminate the six-month minimum imprisonment
25 required by this subdivision. In determining whether to reduce or
26 eliminate the minimum imprisonment pursuant to this subdivision,
27 the court shall consider the seriousness of the facts before the court,
28 whether there are additional allegations of a violation of the order
29 during the pendency of the case before the court, the probability
30 of future violations, the safety of the victim, and whether the
31 defendant has successfully completed or is making progress with
32 counseling.

33 (f) The prosecuting agency of each county shall have the primary
34 responsibility for the enforcement of orders described in
35 subdivisions (a), (b), (d), and (e).

36 (g) (1) Every person who owns, possesses, purchases, or
37 receives a firearm knowing he or she is prohibited from doing so
38 by the provisions of a protective order as defined in Section 136.2
39 of this code, Section 6218 of the Family Code, or Section 527.6
40 ~~or~~, 527.8, *or* 527.85 of the Code of Civil Procedure, or Section

1 15657.03 of the Welfare and Institutions Code, shall be punished
2 under subdivision (g) of Section 12021.

3 (2) Every person subject to a protective order described in
4 paragraph (1) shall not be prosecuted under this section for owning,
5 possessing, purchasing, or receiving a firearm to the extent that
6 firearm is granted an exemption pursuant to subdivision (f) of
7 Section 527.9 of the Code of Civil Procedure, or subdivision (h)
8 of Section 6389 of the Family Code.

9 (h) If probation is granted upon conviction of a violation of
10 subdivision (a), (b), (c), (d), or (e), the court shall impose probation
11 consistent with Section 1203.097, and the conditions of probation
12 may include, in lieu of a fine, one or both of the following
13 requirements:

14 (1) That the defendant make payments to a battered women's
15 shelter or to a shelter for abused elder persons or dependent adults,
16 up to a maximum of five thousand dollars (\$5,000), pursuant to
17 Section 1203.097.

18 (2) That the defendant reimburse the victim for reasonable costs
19 of counseling and other reasonable expenses that the court finds
20 are the direct result of the defendant's offense.

21 (i) For any order to pay a fine, make payments to a battered
22 women's shelter, or pay restitution as a condition of probation
23 under subdivision (e), the court shall make a determination of the
24 defendant's ability to pay. In no event shall any order to make
25 payments to a battered women's shelter be made if it would impair
26 the ability of the defendant to pay direct restitution to the victim
27 or court-ordered child support. Where the injury to a married person
28 is caused in whole or in part by the criminal acts of his or her
29 spouse in violation of this section, the community property may
30 not be used to discharge the liability of the offending spouse for
31 restitution to the injured spouse, required by Section 1203.04, as
32 operative on or before August 2, 1995, or Section 1202.4, or to a
33 shelter for costs with regard to the injured spouse and dependents,
34 required by this section, until all separate property of the offending
35 spouse is exhausted.

36 SEC. 11. Section 626.10 of the Penal Code is amended to read:

37 626.10. (a) (1) Any person, except a duly appointed peace
38 officer as defined in Chapter 4.5 (commencing with Section 830)
39 of Title 3 of Part 2, a full-time paid peace officer of another state
40 or the federal government who is carrying out official duties while

1 in this state, a person summoned by any officer to assist in making
2 arrests or preserving the peace while the person is actually engaged
3 in assisting any officer, or a member of the military forces of this
4 state or the United States who is engaged in the performance of
5 his or her duties, who brings or possesses any dirk, dagger, ice
6 pick, knife having a blade longer than 2½ inches, folding knife
7 with a blade that locks into place, razor with an unguarded blade,
8 ~~taser~~ *less lethal weapon, as defined in Section 12601*, or stun gun,
9 as defined in subdivision (a) of Section 244.5, any instrument that
10 expels a metallic projectile such as a BB or a pellet, through the
11 force of air pressure, CO₂ pressure, or spring action, or any spot
12 marker gun, upon the grounds of, or within, any public or private
13 school providing instruction in kindergarten or any of grades 1 to
14 12, inclusive, is guilty of a public offense, punishable by
15 imprisonment in a county jail not exceeding one year, or by
16 imprisonment in the state prison.

17 (2) Any person, except a duly appointed peace officer as defined
18 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
19 2, a full-time paid peace officer of another state or the federal
20 government who is carrying out official duties while in this state,
21 a person summoned by any officer to assist in making arrests or
22 preserving the peace while the person is actually engaged in
23 assisting any officer, or a member of the military forces of this
24 state or the United States who is engaged in the performance of
25 his or her duties, who brings or possesses a razor blade or a box
26 cutter upon the grounds of, or within, any public or private school
27 providing instruction in kindergarten or any of grades 1 to 12,
28 inclusive, is guilty of a public offense, punishable by imprisonment
29 in a county jail not exceeding one year.

30 (b) Any person, except a duly appointed peace officer as defined
31 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
32 2, a full-time paid peace officer of another state or the federal
33 government who is carrying out official duties while in this state,
34 a person summoned by any officer to assist in making arrests or
35 preserving the peace while the person is actually engaged in
36 assisting any officer, or a member of the military forces of this
37 state or the United States who is engaged in the performance of
38 his or her duties, who brings or possesses any dirk, dagger, ice
39 pick, or knife having a fixed blade longer than 2½ inches upon
40 the grounds of, or within, any private university, the University of

1 California, the California State University, or the California
2 Community Colleges is guilty of a public offense, punishable by
3 imprisonment in a county jail not exceeding one year, or by
4 imprisonment in the state prison.

5 (c) Subdivisions (a) and (b) do not apply to any person who
6 brings or possesses a knife having a blade longer than 2 ½ inches,
7 a razor with an unguarded blade, a razor blade, or a box cutter
8 upon the grounds of, or within, a public or private school providing
9 instruction in kindergarten or any of grades 1 to 12, inclusive, or
10 any private university, state university, or community college at
11 the direction of a faculty member of the private university, state
12 university, or community college, or a certificated or classified
13 employee of the school for use in a private university, state
14 university, community college, or school-sponsored activity or
15 class.

16 (d) Subdivisions (a) and (b) do not apply to any person who
17 brings or possesses an ice pick, a knife having a blade longer than
18 2 ½ inches, a razor with an unguarded blade, a razor blade, or a
19 box cutter upon the grounds of, or within, a public or private school
20 providing instruction in kindergarten or any of grades 1 to 12,
21 inclusive, or any private university, state university, or community
22 college for a lawful purpose within the scope of the person's
23 employment.

24 (e) Subdivision (b) does not apply to any person who brings or
25 possesses an ice pick or a knife having a fixed blade longer than
26 2 ½ inches upon the grounds of, or within, any private university,
27 state university, or community college for lawful use in or around
28 a residence or residential facility located upon those grounds or
29 for lawful use in food preparation or consumption.

30 (f) Subdivision (a) does not apply to any person who brings an
31 instrument that expels a metallic projectile such as a BB or a pellet,
32 through the force of air pressure, CO₂ pressure, or spring action,
33 or any spot marker gun, or any razor blade or box cutter upon the
34 grounds of, or within, a public or private school providing
35 instruction in kindergarten or any of grades 1 to 12, inclusive, if
36 the person has the written permission of the school principal or
37 his or her designee.

38 (g) Any certificated or classified employee or school peace
39 officer of a public or private school providing instruction in
40 kindergarten or any of grades 1 to 12, inclusive, may seize any of

1 the weapons described in subdivision (a), and any certificated or
2 classified employee or school peace officer of any private
3 university, state university, or community college may seize any
4 of the weapons described in subdivision (b), from the possession
5 of any person upon the grounds of, or within, the school if he or
6 she knows, or has reasonable cause to know, the person is
7 prohibited from bringing or possessing the weapon upon the
8 grounds of, or within, the school.

9 (h) As used in this section, “dirk” or “dagger” means a knife or
10 other instrument with or without a handguard that is capable of
11 ready use as a stabbing weapon that may inflict great bodily injury
12 or death.

13 (i) Any person who, without the written permission of the
14 college or university president or chancellor or his or her designee,
15 brings or possesses a less lethal weapon, as defined in Section
16 12601, or a stun gun, as defined in Section 12650, upon the grounds
17 of or within, a public or private college or university campus is
18 guilty of a misdemeanor.

19 SEC. 12. Section 786 of the Penal Code is amended to read:

20 786. (a) When property taken in one jurisdictional territory
21 by burglary, carjacking, robbery, theft, or embezzlement has been
22 brought into another, or when property is received in one
23 jurisdictional territory with the knowledge that it has been stolen
24 or embezzled and the property was stolen or embezzled in another
25 jurisdictional territory, the jurisdiction of the offense is in any
26 competent court within either jurisdictional territory, or any
27 contiguous jurisdictional territory if the arrest is made within the
28 contiguous territory, the prosecution secures on the record the
29 defendant’s knowing, voluntary, and intelligent waiver of the right
30 of vicinage, and the defendant is charged with one or more property
31 crimes in the arresting territory.

32 (b) (1) The jurisdiction of a criminal action for unauthorized
33 use, retention, or transfer of personal identifying information, as
34 defined in subdivision (b) of Section 530.55, shall also include the
35 county where the theft of the personal identifying information
36 occurred, the county in which the victim resided at the time the
37 offense was committed, or the county where the information was
38 used for an illegal purpose. If multiple offenses of unauthorized
39 use of personal identifying information, either all involving the
40 same defendant or defendants and the same personal identifying

1 information belonging to the one person, or all involving the same
2 defendant or defendants and the same scheme or substantially
3 similar activity, occur in multiple jurisdictions, then any of those
4 jurisdictions is a proper jurisdiction for all of the offenses.
5 Jurisdiction also extends to all associated offenses connected
6 together in their commission to the underlying ~~identify~~ *identity*
7 theft offense or identity theft offenses.

8 (2) When charges alleging multiple offenses of unauthorized
9 use of personal identifying information occurring in multiple
10 territorial jurisdictions are filed in one county pursuant to this
11 section, the court shall hold a hearing to consider whether the
12 matter should proceed in the county of filing, or whether one or
13 more counts should be severed. The district attorney filing the
14 complaint shall present evidence to the court that the district
15 attorney in each county where any of the charges could have been
16 filed has agreed that the matter should proceed in the county of
17 filing. In determining whether all counts in the complaint should
18 be joined in one county for prosecution, the court shall consider
19 the location and complexity of the likely evidence, where the
20 majority of the offenses occurred, whether or not the offenses
21 involved substantially similar activity or the same scheme, the
22 rights of the defendant and the people, and the convenience of, or
23 hardship to, the victim and witnesses.

24 (3) When an action for unauthorized use, retention, or transfer
25 of personal identifying information is filed in the county in which
26 the victim resided at the time the offense was committed, and no
27 other basis for the jurisdiction applies, the court, upon its own
28 motion or the motion of the defendant, shall hold a hearing to
29 determine whether the county of the victim's residence is the proper
30 venue for trial of the case. In ruling on the matter, the court shall
31 consider the rights of the parties, the access of the parties to
32 evidence, the convenience to witnesses, and the interests of justice.

33 (c) This section shall not be interpreted to alter victims' rights
34 under Section 530.6.

35 SEC. 13. Chapter 3 (commencing with Section 1228) of Title
36 8 of Part 2 of the Penal Code, as added by Section 36 of Chapter
37 28 of the 3rd Extraordinary Session of the Statutes of 2009, is
38 repealed.

39 SEC. 14. Section 1328d of the Penal Code is amended to read:

1 1328d. Notwithstanding Section 1328, a subpoena may be
2 delivered by mail or messenger. Service shall be effected when
3 the witness acknowledges receipt of the subpoena to the sender,
4 by telephone, by mail, *by any form of electronic communication,*
5 *including the Internet,* or in person, and identifies himself or herself
6 by reference to his or her date of birth and his or her driver's license
7 number or Department of Motor Vehicles identification card
8 number. The sender shall make a written notation of the identifying
9 information obtained during any acknowledgment by telephone
10 or in person. A subpoena issued and acknowledged pursuant to
11 this section shall have the same force and effect as a subpoena
12 personally served. Failure to comply with a subpoena issued and
13 acknowledged pursuant to this section may be punished as a
14 contempt and the subpoena may so state; provided, that a warrant
15 of arrest or a body attachment may not be issued based upon a
16 failure to appear after being subpoenaed pursuant to this section.

17 A party requesting a continuance based upon the failure of a
18 witness to appear in court at the time and place required for his or
19 her appearance or testimony pursuant to a subpoena, shall prove
20 to the court that the party has complied with the provisions of this
21 section. Such a continuance shall only be granted for a period of
22 time which would allow personal service of the subpoena and in
23 no event longer than that allowed by law, including the
24 requirements of Sections 861 and 1382.

25 SEC. 15. Section 1417.6 of the Penal Code is amended to read:

26 1417.6. (a) The provisions of Section 1417.5 shall not apply
27 to any dangerous or deadly weapons, narcotic or poisonous drugs,
28 explosives, or any property of any kind or character whatsoever
29 the possession of which is prohibited by law and that was used by
30 a defendant in the commission of the crime of which the defendant
31 was convicted, or with which the defendant was armed or that the
32 defendant had upon his or her person at the time of the defendant's
33 arrest.

34 Any of this property introduced or filed as an exhibit shall be,
35 by order of the trial court, destroyed or otherwise disposed of under
36 the conditions provided in the order no sooner than 60 days
37 following the final determination of the criminal action or
38 proceeding.

39 (b) (1) Every person who knowingly has in his or her possession
40 any tool or device that is seized and of a type used in the

1 commission of a violation of Section 10801, 10802, or 10803 of
2 the Vehicle Code, shall be subject to having the tool or device
3 intended for the above purpose deemed a nuisance as provided in
4 paragraph (2).

5 (2) An evidentiary hearing shall be held only upon conviction
6 of the defendant for a violation of Section 10801, 10802, or 10803
7 of the Vehicle Code and after 15 days' notice is given to the
8 defendant of the state's intent to declare as a nuisance any property
9 that is described in paragraph (1). All relevant evidence shall be
10 admissible at the hearing and the state shall prove by a
11 preponderance of the evidence that the property seized is of a type
12 used in facilitating the commission of the crime of which the
13 defendant was convicted.

14 (3) If a person purports to be the lawful owner of any tool or
15 device the state seeks to be declared a nuisance, the person shall
16 show proof by a preponderance of the evidence at the hearing
17 pursuant to paragraph (2), that he or she owns the tool or device,
18 and the illegal use of the tool or device was without his or her
19 knowledge or consent.

20 (4) Following a determination that the property shall be declared
21 a nuisance, the property shall be disposed of as provided in
22 paragraph (2) or (3) of subdivision ~~(b)~~ (c) of Section 1417.5.

23 SEC. 16. Section 11160 of the Penal Code is amended to read:

24 11160. (a) Any health practitioner employed in a health
25 facility, clinic, physician's office, local or state public health
26 department, or a clinic or other type of facility operated by a local
27 or state public health department who, in his or her professional
28 capacity or within the scope of his or her employment, provides
29 medical services for a physical condition to a patient whom he or
30 she knows or reasonably suspects is a person described as follows,
31 shall immediately make a report in accordance with subdivision
32 (b):

33 (1) Any person suffering from any wound or other physical
34 injury inflicted by his or her own act or inflicted by another where
35 the injury is by means of a firearm.

36 (2) Any person suffering from any wound or other physical
37 injury inflicted upon the person where the injury is the result of
38 assaultive or abusive conduct.

39 (b) Any health practitioner employed in a health facility, clinic,
40 physician's office, local or state public health department, or a

1 clinic or other type of facility operated by a local or state public
2 health department shall make a report regarding persons described
3 in subdivision (a) to a local law enforcement agency as follows:

4 (1) A report by telephone shall be made immediately or as soon
5 as practically possible.

6 (2) A written report shall be prepared on the standard form
7 developed in compliance with paragraph (4) of this subdivision,
8 and Section 11160.2, and adopted by the agency or agencies
9 designated by the Director of Finance pursuant to Section 13820,
10 or on a form developed and adopted by another state agency that
11 otherwise fulfills the requirements of the standard form. The
12 completed form shall be sent to a local law enforcement agency
13 within two working days of receiving the information regarding
14 the person.

15 (3) A local law enforcement agency shall be notified and a
16 written report shall be prepared and sent pursuant to paragraphs
17 (1) and (2) even if the person who suffered the wound, other injury,
18 or assaultive or abusive conduct has expired, regardless of whether
19 or not the wound, other injury, or assaultive or abusive conduct
20 was a factor contributing to the death, and even if the evidence of
21 the conduct of the perpetrator of the wound, other injury, or
22 assaultive or abusive conduct was discovered during an autopsy.

23 (4) The report shall include, but shall not be limited to, the
24 following:

25 (A) The name of the injured person, if known.

26 (B) The injured person's whereabouts.

27 (C) The character and extent of the person's injuries.

28 (D) The identity of any person the injured person alleges
29 inflicted the wound, other injury, or assaultive or abusive conduct
30 upon the injured person.

31 (c) For the purposes of this section, "injury" shall not include
32 any psychological or physical condition brought about solely
33 through the voluntary administration of a narcotic or restricted
34 dangerous drug.

35 (d) For the purposes of this section, "assaultive or abusive
36 conduct" shall include any of the following offenses:

37 (1) Murder, in violation of Section 187.

38 (2) Manslaughter, in violation of Section 192 or 192.5.

39 (3) Mayhem, in violation of Section 203.

40 (4) Aggravated mayhem, in violation of Section 205.

- 1 (5) Torture, in violation of Section 206.
- 2 (6) Assault with intent to commit mayhem, rape, sodomy, or
- 3 oral copulation, in violation of Section 220.
- 4 (7) Administering controlled substances or anesthetic to aid in
- 5 commission of a felony, in violation of Section 222.
- 6 (8) Battery, in violation of Section 242.
- 7 (9) Sexual battery, in violation of Section 243.4.
- 8 (10) Incest, in violation of Section 285.
- 9 (11) Throwing any vitriol, corrosive acid, or caustic chemical
- 10 with intent to injure or disfigure, in violation of Section 244.
- 11 (12) Assault with a *less lethal weapon, as defined in Section*
- 12 *12601, or stun gun or taser*, in violation of Section 244.5.
- 13 (13) Assault with a deadly weapon, firearm, assault weapon, or
- 14 machinegun, or by means likely to produce great bodily injury, in
- 15 violation of Section 245.
- 16 (14) Rape, in violation of Section 261.
- 17 (15) Spousal rape, in violation of Section 262.
- 18 (16) Procuring any female to have sex with another man, in
- 19 violation of Section 266, 266a, 266b, or 266c.
- 20 (17) Child abuse or endangerment, in violation of Section 273a
- 21 or 273d.
- 22 (18) Abuse of spouse or cohabitant, in violation of Section
- 23 273.5.
- 24 (19) Sodomy, in violation of Section 286.
- 25 (20) Lewd and lascivious acts with a child, in violation of
- 26 Section 288.
- 27 (21) Oral copulation, in violation of Section 288a.
- 28 (22) Sexual penetration, in violation of Section 289.
- 29 (23) Elder abuse, in violation of Section 368.
- 30 (24) An attempt to commit any crime specified in paragraphs
- 31 (1) to (23), inclusive.
- 32 (e) When two or more persons who are required to report are
- 33 present and jointly have knowledge of a known or suspected
- 34 instance of violence that is required to be reported pursuant to this
- 35 section, and when there is an agreement among these persons to
- 36 report as a team, the team may select by mutual agreement a
- 37 member of the team to make a report by telephone and a single
- 38 written report, as required by subdivision (b). The written report
- 39 shall be signed by the selected member of the reporting team. Any

1 member who has knowledge that the member designated to report
2 has failed to do so shall thereafter make the report.

3 (f) The reporting duties under this section are individual, except
4 as provided in subdivision (e).

5 (g) No supervisor or administrator shall impede or inhibit the
6 reporting duties required under this section and no person making
7 a report pursuant to this section shall be subject to any sanction
8 for making the report. However, internal procedures to facilitate
9 reporting and apprise supervisors and administrators of reports
10 may be established, except that these procedures shall not be
11 inconsistent with this article. The internal procedures shall not
12 require any employee required to make a report under this article
13 to disclose his or her identity to the employer.

14 (h) For the purposes of this section, it is the Legislature's intent
15 to avoid duplication of information.

16 SEC. 17. Section 12021 of the Penal Code is amended to read:

17 12021. (a) (1) Any person who has been convicted of a felony
18 under the laws of the United States, the State of California, or any
19 other state, government, or country or of an offense enumerated
20 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
21 to the use of any narcotic drug, and who owns, purchases, receives,
22 or has in his or her possession or under his or her custody or control
23 any firearm is guilty of a felony.

24 (2) Any person who has two or more convictions for violating
25 paragraph (2) of subdivision (a) of Section 417 and who owns,
26 purchases, receives, or has in his or her possession or under his or
27 her custody or control any firearm is guilty of a felony.

28 (b) Notwithstanding subdivision (a), any person who has been
29 convicted of a felony or of an offense enumerated in Section
30 12001.6, when that conviction results from certification by the
31 juvenile court for prosecution as an adult in an adult court under
32 Section 707 of the Welfare and Institutions Code, and who owns
33 or has in his or her possession or under his or her custody or control
34 any firearm is guilty of a felony.

35 (c) (1) Except as provided in subdivision (a) or paragraph (2)
36 of this subdivision, any person who has been convicted of a
37 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
38 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
39 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,
40 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision

1 (b) or (d) of Section 12034, Section 12040, subdivision (b) of
2 Section 12072, subdivision (a) of former Section 12100, Section
3 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the
4 Welfare and Institutions Code, any firearm-related offense pursuant
5 to Sections 871.5 and 1001.5 of the Welfare and Institutions Code,
6 or of the conduct punished in paragraph (3) of subdivision (g) of
7 Section 12072, and who, within 10 years of the conviction, owns,
8 purchases, receives, or has in his or her possession or under his or
9 her custody or control, any firearm is guilty of a public offense,
10 which shall be punishable by imprisonment in a county jail not
11 exceeding one year or in the state prison, by a fine not exceeding
12 one thousand dollars (\$1,000), or by both that imprisonment and
13 fine. The court, on forms prescribed by the Department of Justice,
14 shall notify the department of persons subject to this subdivision.
15 However, the prohibition in this paragraph may be reduced,
16 eliminated, or conditioned as provided in paragraph (2) or (3).

17 (2) Any person employed as a peace officer described in Section
18 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
19 or livelihood is dependent on the ability to legally possess a
20 firearm, who is subject to the prohibition imposed by this
21 subdivision because of a conviction under Section 273.5, 273.6,
22 or 646.9, may petition the court only once for relief from this
23 prohibition. The petition shall be filed with the court in which the
24 petitioner was sentenced. If possible, the matter shall be heard
25 before the same judge who sentenced the petitioner. Upon filing
26 the petition, the clerk of the court shall set the hearing date and
27 shall notify the petitioner and the prosecuting attorney of the date
28 of the hearing. Upon making each of the following findings, the
29 court may reduce or eliminate the prohibition, impose conditions
30 on reduction or elimination of the prohibition, or otherwise grant
31 relief from the prohibition as the court deems appropriate:

32 (A) Finds by a preponderance of the evidence that the petitioner
33 is likely to use a firearm in a safe and lawful manner.

34 (B) Finds that the petitioner is not within a prohibited class as
35 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
36 and the court is not presented with any credible evidence that the
37 petitioner is a person described in Section 8100 or 8103 of the
38 Welfare and Institutions Code.

1 (C) (i) Finds that the petitioner does not have a previous
2 conviction under this subdivision no matter when the prior
3 conviction occurred.

4 (ii) In making its decision, the court shall consider the
5 petitioner's continued employment, the interest of justice, any
6 relevant evidence, and the totality of the circumstances. The court
7 shall require, as a condition of granting relief from the prohibition
8 under this section, that the petitioner agree to participate in
9 counseling as deemed appropriate by the court. Relief from the
10 prohibition shall not relieve any other person or entity from any
11 liability that might otherwise be imposed. It is the intent of the
12 Legislature that courts exercise broad discretion in fashioning
13 appropriate relief under this paragraph in cases in which relief is
14 warranted. However, nothing in this paragraph shall be construed
15 to require courts to grant relief to any particular petitioner. It is
16 the intent of the Legislature to permit persons who were convicted
17 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
18 relief from the prohibition imposed by this subdivision.

19 (3) Any person who is subject to the prohibition imposed by
20 this subdivision because of a conviction of an offense prior to that
21 offense being added to paragraph (1) may petition the court only
22 once for relief from this prohibition. The petition shall be filed
23 with the court in which the petitioner was sentenced. If possible,
24 the matter shall be heard before the same judge that sentenced the
25 petitioner. Upon filing the petition, the clerk of the court shall set
26 the hearing date and notify the petitioner and the prosecuting
27 attorney of the date of the hearing. Upon making each of the
28 following findings, the court may reduce or eliminate the
29 prohibition, impose conditions on reduction or elimination of the
30 prohibition, or otherwise grant relief from the prohibition as the
31 court deems appropriate:

32 (A) Finds by a preponderance of the evidence that the petitioner
33 is likely to use a firearm in a safe and lawful manner.

34 (B) Finds that the petitioner is not within a prohibited class as
35 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
36 and the court is not presented with any credible evidence that the
37 petitioner is a person described in Section 8100 or 8103 of the
38 Welfare and Institutions Code.

1 (C) (i) Finds that the petitioner does not have a previous
2 conviction under this subdivision, no matter when the prior
3 conviction occurred.

4 (ii) In making its decision, the court may consider the interest
5 of justice, any relevant evidence, and the totality of the
6 circumstances. It is the intent of the Legislature that courts exercise
7 broad discretion in fashioning appropriate relief under this
8 paragraph in cases in which relief is warranted. However, nothing
9 in this paragraph shall be construed to require courts to grant relief
10 to any particular petitioner.

11 (4) Law enforcement officials who enforce the prohibition
12 specified in this subdivision against a person who has been granted
13 relief pursuant to paragraph (2) or (3) shall be immune from any
14 liability for false arrest arising from the enforcement of this
15 subdivision unless the person has in his or her possession a certified
16 copy of the court order that granted the person relief from the
17 prohibition. This immunity from liability shall not relieve any
18 person or entity from any other liability that might otherwise be
19 imposed.

20 (d) (1) Any person who, as an express condition of probation,
21 is prohibited or restricted from owning, possessing, controlling,
22 receiving, or purchasing a firearm and who owns, purchases,
23 receives, or has in his or her possession or under his or her custody
24 or control, any firearm but who is not subject to subdivision (a) or
25 (c) is guilty of a public offense, which shall be punishable by
26 imprisonment in a county jail not exceeding one year or in the
27 state prison, by a fine not exceeding one thousand dollars (\$1,000),
28 or by both that imprisonment and fine. The court, on forms
29 provided by the Department of Justice, shall notify the department
30 of persons subject to this subdivision. The notice shall include a
31 copy of the order of probation and a copy of any minute order or
32 abstract reflecting the order and conditions of probation.

33 (2) For any person who is subject to subdivision (a), (b), or (c),
34 the court shall, at the time judgment is imposed, provide on a form
35 supplied by the Department of Justice, a notice to the defendant
36 prohibited by this section from owning, purchasing, receiving,
37 possessing or having under his or her custody or control, any
38 firearm. The notice shall inform the defendant of the prohibition
39 regarding firearms and include a form to facilitate the transfer of

1 firearms. Failure to provide the notice shall not be a defense to a
2 violation of this section.

3 (e) Any person who (1) is alleged to have committed an offense
4 listed in subdivision (b) of Section 707 of the Welfare and
5 Institutions Code, an offense described in subdivision (b) of Section
6 1203.073, any offense enumerated in paragraph (1) of subdivision
7 (c), or any offense described in subdivision (a) of Section 12025,
8 subdivision (a) of Section 12031, or subdivision (a) of Section
9 12034, and (2) is subsequently adjudged a ward of the juvenile
10 court within the meaning of Section 602 of the Welfare and
11 Institutions Code because the person committed an offense listed
12 in subdivision (b) of Section 707 of the Welfare and Institutions
13 Code, an offense described in subdivision (b) of Section 1203.073,
14 any offense enumerated in paragraph (1) of subdivision (c), or any
15 offense described in subdivision (a) of Section 12025, subdivision
16 (a) of Section 12031, or subdivision (a) of Section 12034, shall
17 not own, or have in his or her possession or under his or her
18 custody or control, any firearm until the age of 30 years. A
19 violation of this subdivision shall be punishable by imprisonment
20 in a county jail not exceeding one year or in the state prison, by a
21 fine not exceeding one thousand dollars (\$1,000), or by both that
22 imprisonment and fine. The juvenile court, on forms prescribed
23 by the Department of Justice, shall notify the department of persons
24 subject to this subdivision. Notwithstanding any other law, the
25 forms required to be submitted to the department pursuant to this
26 subdivision may be used to determine eligibility to acquire a
27 firearm.

28 (f) Subdivision (a) shall not apply to a person who has been
29 convicted of a felony under the laws of the United States unless
30 either of the following criteria is satisfied:

31 (1) Conviction of a like offense under California law can only
32 result in imposition of felony punishment.

33 (2) The defendant was sentenced to a federal correctional facility
34 for more than 30 days, or received a fine of more than one thousand
35 dollars (\$1,000), or received both punishments.

36 (g) (1) Every person who purchases or receives, or attempts to
37 purchase or receive, a firearm knowing that he or she is prohibited
38 from doing so by a temporary restraining order or injunction issued
39 pursuant to Section 527.6-~~or~~, 527.8, *or* 527.85 of the Code of Civil
40 Procedure, a protective order as defined in Section 6218 of the

1 Family Code, a protective order issued pursuant to Section 136.2
2 or 646.91 of this code, or a protective order issued pursuant to
3 Section 15657.03 of the Welfare and Institutions Code, is guilty
4 of a public offense, which shall be punishable by imprisonment
5 in a county jail not exceeding one year or in the state prison, by a
6 fine not exceeding one thousand dollars (\$1,000), or by both that
7 imprisonment and fine.

8 (2) Every person who owns or possesses a firearm knowing that
9 he or she is prohibited from doing so by a temporary restraining
10 order or injunction issued pursuant to Section 527.6-~~or~~, 527.8, *or*
11 527.85 of the Code of Civil Procedure, a protective order as defined
12 in Section 6218 of the Family Code, a protective order issued
13 pursuant to Section 136.2 or 646.91 of this code, or a protective
14 order issued pursuant to Section 15657.03 of the Welfare and
15 Institutions Code, is guilty of a public offense, which shall be
16 punishable by imprisonment in a county jail not exceeding one
17 year, by a fine not exceeding one thousand dollars (\$1,000), or by
18 both that imprisonment and fine.

19 (3) The Judicial Council shall provide notice on all protective
20 orders that the respondent is prohibited from owning, possessing,
21 purchasing, receiving, or attempting to purchase or receive a
22 firearm while the protective order is in effect. The order shall also
23 state that the firearm shall be relinquished to the local law
24 enforcement agency for that jurisdiction or sold to a licensed gun
25 dealer, and that proof of surrender or sale shall be filed within a
26 specified time of receipt of the order. The order shall state the
27 penalties for a violation of the prohibition. The order shall also
28 state on its face the expiration date for relinquishment.

29 (4) If probation is granted upon conviction of a violation of this
30 subdivision, the court shall impose probation consistent with
31 Section 1203.097.

32 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
33 justifiable where all of the following conditions are met:

34 (A) The person found the firearm or took the firearm from a
35 person who was committing a crime against him or her.

36 (B) The person possessed the firearm no longer than was
37 necessary to deliver or transport the firearm to a law enforcement
38 agency for that agency's disposition according to law.

1 (C) If the firearm was transported to a law enforcement agency,
2 it was transported in accordance with paragraph (18) of subdivision
3 (a) of Section 12026.2.

4 (D) If the firearm is being transported to a law enforcement
5 agency, the person transporting the firearm has given prior notice
6 to the law enforcement agency that he or she is transporting the
7 firearm to the law enforcement agency for disposition according
8 to law.

9 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
10 (e), the trier of fact shall determine whether the defendant was
11 acting within the provisions of the exemption created by this
12 subdivision.

13 (3) The defendant has the burden of proving by a preponderance
14 of the evidence that he or she comes within the provisions of the
15 exemption created by this subdivision.

16 (i) Subject to available funding, the Attorney General, working
17 with the Judicial Council, the California Alliance Against Domestic
18 Violence, prosecutors, and law enforcement, probation, and parole
19 officers, shall develop a protocol for the implementation of the
20 provisions of this section. The protocol shall be designed to
21 facilitate the enforcement of restrictions on firearm ownership,
22 including provisions for giving notice to defendants who are
23 restricted, provisions for informing those defendants of the
24 procedures by which defendants shall dispose of firearms when
25 required to do so, provisions explaining how defendants shall
26 provide proof of the lawful disposition of firearms, and provisions
27 explaining how defendants may obtain possession of seized
28 firearms when legally permitted to do so pursuant to this section
29 or any other provision of law. The protocol shall be completed on
30 or before January 1, 2005.

31 SEC. 18. Section 13540 of the Penal Code is amended to read:

32 13540. (a) Any person or persons desiring peace officer status
33 under Chapter 4.5 (commencing with Section 830) of Title 3 of
34 Part 2 who, on January 1, 1990, were not entitled to be designated
35 as peace officers under that chapter shall request the Commission
36 on Peace Officer Standards and Training to undertake a feasibility
37 study regarding designating that person or persons as peace
38 officers. The request and study shall be undertaken in accordance
39 with regulations adopted by the commission. The commission may
40 charge any person requesting a study, a fee, not to exceed the actual

1 cost of undertaking the study. Nothing in this article shall apply
2 to or otherwise affect the authority of the ~~Director of Corrections;~~
3 ~~the Director of the Youth Authority, the Director of the Youthful~~
4 ~~Offender Parole Board, or the Secretary of the Youth and Adult~~
5 ~~Correctional Agency~~ *Chief Deputy Secretary for Adult Operations,*
6 *the Chief Deputy Secretary for Juvenile Justice, the Chair of the*
7 *Board of Parole Hearings, or the Secretary of the Department of*
8 *Corrections and Rehabilitation* to designate peace officers as
9 provided for in Section 830.5.

10 (b) Any person or persons who are designated as peace officers
11 under Chapter 4.5, (commencing with Section 830) of Title 3 of
12 Part 2, and who desire a change in peace officer designation or
13 status, shall request the Commission on Peace Officer Standards
14 and Training to undertake a study to assess the need for a change
15 in designation or status. The request and study shall be undertaken
16 in accordance with regulations adopted by the commission. The
17 commission may charge any person, agency, or organization
18 requesting a study, a fee, not to exceed the actual cost of
19 undertaking the study.

20 SEC. 19. Section 13542 of the Penal Code is amended to read:

21 13542. (a) In order for the commission to give a favorable
22 recommendation as to a ~~change in designation to peace officer~~
23 ~~status~~ *peace officer designation*, the person or persons desiring the
24 designation ~~change~~ shall be employed by an agency with a
25 supervisory structure consisting of a chief law enforcement officer,
26 the agency shall agree to comply with the training requirements
27 set forth in Section 832, and shall be subject to the funding
28 restriction set forth in Section 13526. The commission shall issue
29 the study and its recommendations to the requesting person or
30 agency within 18 months of the mutual acceptance of a contract
31 between the requesting person or agency and the commission. A
32 copy of that study and recommendations shall also be submitted
33 to the Legislature.

34 (b) (1) In order for the commission to give a favorable
35 recommendation as to a change in peace officer designation or
36 status, the person or persons desiring the change in peace officer
37 designation or status shall be employed by an agency that ~~is~~
38 ~~currently participating in the Peace Officer Standard Training~~
39 ~~program~~ *participates in, and complies with, regulations set forth*
40 *by the Commission on Peace Officer Standards and Training.*

1 (2) If the designation change is moving the person or persons
2 into Section 830.1, the person or persons shall obtain the basic
3 certificate issued by the Commission on Peace Officer Standards
4 and Training, set forth in Section 832.4.

5 (3) The commission shall issue the study and its
6 recommendations, as specified in subdivision (b) of Section 13540,
7 to the requesting person or persons, within 12 months of the mutual
8 acceptance of a contract between the requesting person or agency
9 and the commission, or as soon as possible thereafter if the
10 commission shows good cause as to the need for an extension of
11 the 12-month time period.

12 (4) A copy of that study and recommendation shall also be
13 submitted to the Legislature.

14 SEC. 20. Section 13821 of the Penal Code is amended to read:

15 13821. (a) Of the amount deposited in the Local Safety and
16 Protection Account in the Transportation Fund authorized by
17 Section 10752.2 of the Revenue and Taxation Code, the Controller
18 shall allocate 12.68 percent in the 2008–09 fiscal year and 11.42
19 percent in the 2009–10 fiscal year, and each fiscal year thereafter,
20 to the California Emergency Management Agency. The Controller
21 shall allocate these funds on a quarterly basis beginning April 1,
22 2009.

23 (b) There funds shall be allocated by the California Emergency
24 Management Agency according to the agency's existing
25 programmatic guidelines and consistent with the programs
26 approved in the Budget Act of 2008. Of the amount allocated
27 pursuant to subdivision (a), the California Emergency Management
28 Agency shall distribute these funds according to the following
29 percentages:

30 (1) The California Multi-Jurisdictional Methamphetamine
31 Enforcement Teams shall receive 33.95 percent in the 2008–09
32 fiscal year and each fiscal year thereafter.

33 (2) The Multi-Agency Gang Enforcement Consortium shall
34 received 0.15 percent in the 2008–09 fiscal year, and each fiscal
35 year thereafter.

36 (3) The CALGANG program administered by the Department
37 of Justice shall receive 0.47 percent in the 2008–09 fiscal year,
38 and each fiscal year thereafter.

1 (4) The Evidentiary Medical Training Program shall receive
2 1.02 percent in the 2008–09 fiscal year and each fiscal year
3 thereafter.

4 (5) The Public Prosecutors and Public Defenders Legal Training
5 program shall receive 0.01 percent in the 2008–09 fiscal year and
6 each fiscal year thereafter.

7 (6) The Sexual Assault Felony Enforcement Teams, authorized
8 by Section 13887, shall receive 8.93 percent in the 2008–09 fiscal
9 year and each fiscal year thereafter.

10 (7) The Vertical Prosecution Block Grant Program shall receive
11 25.35 percent in the 2008–09 fiscal year and each fiscal year
12 thereafter.

13 (8) The High Technology Theft Apprehension and ~~Prosecution~~
14 *Prosecution* Program, authorized by Section 13848.2, shall receive
15 20.84 percent in the 2008–09 fiscal year, and each fiscal year
16 thereafter.

17 (9) The Gang Violence Suppression Program authorized by
18 Section 13826.1, shall receive 2.8 percent in the 2008–09 fiscal
19 year and each fiscal year thereafter.

20 (10) The Central Valley and Central Coast Rural ~~Crim~~ *Crime*
21 Prevention Programs, authorized by Sections 14170 and 14180,
22 shall receive 6.49 percent in the 2008–09 fiscal year and each fiscal
23 year thereafter.

24 (c) Beginning in the 2009–10 fiscal year and each fiscal year
25 thereafter, the California Emergency Management Agency may
26 retain up to 3 percent of the funds allocated in subdivision (a) for
27 program administrative costs.

28 SEC. 21. Section 40000.7 of the Vehicle Code is amended to
29 read:

30 40000.7. (a) A violation of any of the following provisions is
31 a misdemeanor, and not an infraction:

32 (1) Section 2416, relating to regulations for emergency vehicles.

33 (2) Section 2800, relating to failure to obey an officer's lawful
34 order or submit to a lawful inspection.

35 (3) Section 2800.1, relating to fleeing from a peace officer.

36 (4) Section 2801, relating to failure to obey a firefighter's lawful
37 order.

38 (5) Section 2803, relating to unlawful vehicle or load.

39 (6) Section 2813, relating to stopping for inspection.

1 (7) Subdivisions (b), (c), and (d) of Section 4461 and
2 subdivisions (b) and (c) of Section 4463, relating to disabled person
3 placards and disabled person and disabled veteran license plates.

4 (8) Section 4462.5, relating to deceptive or false evidence of
5 vehicle registration.

6 (9) Section 4463.5, relating to deceptive or facsimile license
7 plates.

8 ~~(10) Section 5105.5, relating to environmental license plates.~~

9 ~~(11)~~

10 (10) Section 5500, relating to the surrender of registration
11 documents and license plates before dismantling may begin.

12 ~~(12)~~

13 (11) Section 5506, relating to the sale of a total loss salvage
14 vehicle, or of a vehicle reported for dismantling by a salvage
15 vehicle rebuilder.

16 ~~(13)~~

17 (12) Section 5753, relating to delivery of certificates of
18 ownership and registration when committed by a dealer or any
19 person while a dealer within the preceding 12 months.

20 ~~(14)~~

21 (13) Section 5901, relating to dealers and lessor-retailers giving
22 notice.

23 ~~(15)~~

24 (14) Section 5901.1, relating to lessors giving notice and failure
25 to pay fee.

26 ~~(16)~~

27 (15) Section 8802, relating to the return of canceled, suspended,
28 or revoked certificates of ownership, registration cards, or license
29 plates, when committed by any person with intent to defraud.

30 ~~(17)~~

31 (16) Section 8803, relating to return of canceled, suspended, or
32 revoked documents and license plates of a dealer, manufacturer,
33 remanufacturer, transporter, dismantler, or salesman.

34 (b) This section shall become operative on January 1, 2001.

35 SEC. 22. Section 12301.6 of the Welfare and Institutions Code
36 is amended to read:

37 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a
38 county board of supervisors may, at its option, elect to do either
39 of the following:

1 (1) Contract with a nonprofit consortium to provide for the
2 delivery of in-home supportive services.

3 (2) Establish, by ordinance, a public authority to provide for
4 the delivery of in-home supportive services.

5 (b) (1) To the extent that a county elects to establish a public
6 authority pursuant to paragraph (2) of subdivision (a), the enabling
7 ordinance shall specify the membership of the governing body of
8 the public authority, the qualifications for individual members, the
9 manner of appointment, selection, or removal of members, how
10 long they shall serve, and other matters as the board of supervisors
11 deems necessary for the operation of the public authority.

12 (2) A public authority established pursuant to paragraph (2) of
13 subdivision (a) shall be both of the following:

14 (A) An entity separate from the county, and shall be required
15 to file the statement required by Section 53051 of the Government
16 Code.

17 (B) A corporate public body, exercising public and essential
18 governmental functions and that has all powers necessary or
19 convenient to carry out the delivery of in-home supportive services,
20 including the power to contract for services pursuant to Sections
21 12302 and 12302.1 and that makes or provides for direct payment
22 to a provider chosen by the recipient for the purchase of services
23 pursuant to Sections 12302 and 12302.2. Employees of the public
24 authority shall not be employees of the county for any purpose.

25 (3) (A) As an alternative, the enabling ordinance may designate
26 the board of supervisors as the governing body of the public
27 authority.

28 (B) Any enabling ordinance that designates the board of
29 supervisors as the governing body of the public authority shall
30 also specify that no fewer than 50 percent of the membership of
31 the advisory committee shall be individuals who are current or
32 past users of personal assistance services paid for through public
33 or private funds or recipients of services under this article.

34 (C) If the enabling ordinance designates the board of supervisors
35 as the governing body of the public authority, it shall also require
36 the appointment of an advisory committee of not more than 11
37 individuals who shall be designated in accordance with
38 subparagraph (B).

39 (D) Prior to making designations of committee members
40 pursuant to subparagraph (C), or governing body members in

1 accordance with paragraph (4), the board of supervisors shall solicit
2 recommendations of qualified members of either the governing
3 body of the public authority or of any advisory committee through
4 a fair and open process that includes the provision of reasonable
5 written notice to, and a reasonable response time by, members of
6 the general public and interested persons and organizations.

7 (4) If the enabling ordinance does not designate the board of
8 supervisors as the governing body of the public authority, the
9 enabling ordinance shall require the membership of the governing
10 body to meet the requirements of subparagraph (B) of paragraph
11 (3).

12 (c) (1) Any public authority created pursuant to this section
13 shall be deemed to be the employer of in-home supportive services
14 personnel referred to recipients under paragraph (3) of subdivision
15 (e) within the meaning of Chapter 10 (commencing with Section
16 3500) of Division 4 of Title 1 of the Government Code. Recipients
17 shall retain the right to hire, fire, and supervise the work of any
18 in-home supportive services personnel providing services to them.

19 (2) (A) Any nonprofit consortium contracting with a county
20 pursuant to this section shall be deemed to be the employer of
21 in-home supportive services personnel referred to recipients
22 pursuant to paragraph (3) of subdivision (e) for the purposes of
23 collective bargaining over wages, hours, and other terms and
24 conditions of employment.

25 (B) Recipients shall retain the right to hire, fire, and supervise
26 the work of any in-home supportive services personnel providing
27 services for them.

28 (d) A public authority established pursuant to this section or a
29 nonprofit consortium contracting with a county pursuant to this
30 section, when providing for the delivery of services under this
31 article by contract in accordance with Sections 12302 and 12302.1
32 or by direct payment to a provider chosen by a recipient in
33 accordance with Sections 12302 and 12302.2, shall comply with
34 and be subject to, all statutory and regulatory provisions applicable
35 to the respective delivery mode.

36 (e) Any nonprofit consortium contracting with a county pursuant
37 to this section or any public authority established pursuant to this
38 section shall provide for all of the following functions under this
39 article, but shall not be limited to those functions:

1 (1) The provision of assistance to recipients in finding in-home
2 supportive services personnel through the establishment of a
3 registry.

4 (2) (A) (i) The investigation of the qualifications and
5 background of potential personnel. Upon the effective date of the
6 amendments to this section made during the 2009–10 Fourth
7 Extraordinary Session of the Legislature, the investigation with
8 respect to any provider in the registry or prospective registry
9 applicant shall include criminal background checks requested by
10 the nonprofit consortium or public authority and conducted by the
11 Department of Justice pursuant to Section 15660, for those public
12 authorities or nonprofit consortia using the agencies on the effective
13 date of the amendments to this section made during the 2009–10
14 Fourth Extraordinary Session of the Legislature. Criminal
15 background checks shall be performed no later than July 1, 2010,
16 for any provider who is already on the registry on the effective
17 date of amendments to this section made during the 2009–10 Fourth
18 Extraordinary Session of the Legislature, for whom a criminal
19 background check pursuant to this section has not previously been
20 provided, as a condition of the provider’s continued enrollment in
21 the IHSS program. Criminal background checks shall be conducted
22 at the provider’s expense.

23 (ii) Upon notice from the Department of Justice notifying the
24 public authority or nonprofit consortium that the prospective
25 registry applicant has been convicted of a criminal offense specified
26 in Section 12305.81, the public authority or nonprofit consortium
27 shall deny the request to be placed on the registry for providing
28 supportive services to any recipient of the In-Home Supportive
29 Services program.

30 (B) (i) If an applicant or provider is rejected as a result of
31 information contained in the *Department of Justice* criminal
32 ~~background report offender record information response~~, the
33 ~~applicant or provider individual~~ shall receive a copy of his or her
34 ~~own criminal history record the response~~ from the Department of
35 Justice, as provided in Article 5 (commencing with Section 11120)
36 of Chapter 1 of Title 1 of Part 4 of the Penal Code, to review the
37 information for accuracy and completeness. The applicant or
38 provider shall be advised that if, upon review of his or her own
39 criminal history record he or she finds the information to be
40 inaccurate or incomplete, the applicant or provider shall have the

1 right to submit a formal challenge to the Department of Justice to
2 contest the criminal background report *primary response recipient*.

3 (ii) The department shall develop a written appeal process for
4 the current and prospective providers who are determined ineligible
5 to receive payment for the provision of services in the In-Home
6 Supportive Services program.

7 ~~(C) An applicant shall be informed of his or her right to a waiver~~
8 ~~of the fee for obtaining a copy of a criminal history record, and of~~
9 ~~how to submit a claim and proof of indigency, as required by~~
10 ~~Section 11123 of the Penal Code.~~

11 ~~(D)~~
12 (C) Nothing in this paragraph shall be construed to prohibit the
13 Department of Justice from assessing a fee pursuant to Section
14 11105 or 11123 of the Penal Code to cover the cost of furnishing
15 summary criminal history information.

16 ~~(E)~~
17 (D) As used in this section, “nonprofit consortium” means a
18 nonprofit public benefit corporation that has all powers necessary
19 to carry out the delivery of in-home supportive services under the
20 delegated authority of a government entity.

21 (3) Establishment of a referral system under which in-home
22 supportive services personnel shall be referred to recipients.

23 (4) Providing for training for providers and recipients.

24 (5) (A) Performing any other functions related to the delivery
25 of in-home supportive services.

26 (B) (i) Upon request of a recipient of in-home supportive
27 services pursuant to this chapter, or a recipient of personal care
28 services under the Medi-Cal program pursuant to Section 14132.95,
29 a public authority or nonprofit consortium may provide a criminal
30 background check on a nonregistry applicant or provider from the
31 Department of Justice, in accordance with clause (i) of
32 subparagraph (A) of paragraph (2) of subdivision (e). If the person
33 who is the subject of the criminal background check is not hired
34 or is terminated because of the information contained in the
35 criminal background report, the provisions of subparagraph (B)
36 of paragraph (2) of subdivision (e) shall apply.

37 (ii) A recipient of in-home supportive services pursuant to this
38 chapter or a recipient of personal care services under the Medi-Cal
39 program may elect to employ an individual as their service provider
40 notwithstanding the individual’s record of previous criminal

1 convictions, unless those convictions include any of the offenses
2 specified in Section 12305.81.

3 (6) Ensuring that the requirements of the personal care option
4 pursuant to Subchapter 19 (commencing with Section 1396) of
5 Chapter 7 of Title 42 of the United States Code are met.

6 (f) (1) Any nonprofit consortium contracting with a county
7 pursuant to this section or any public authority created pursuant
8 to this section shall be deemed not to be the employer of in-home
9 supportive services personnel referred to recipients under this
10 section for purposes of liability due to the negligence or intentional
11 torts of the in-home supportive services personnel.

12 (2) In no case shall a nonprofit consortium contracting with a
13 county pursuant to this section or any public authority created
14 pursuant to this section be held liable for action or omission of any
15 in-home supportive services personnel whom the nonprofit
16 consortium or public authority did not list on its registry or
17 otherwise refer to a recipient.

18 (3) Counties and the state shall be immune from any liability
19 resulting from their implementation of this section in the
20 administration of the In-Home Supportive Services program. Any
21 obligation of the public authority or consortium pursuant to this
22 section, whether statutory, contractual, or otherwise, shall be the
23 obligation solely of the public authority or nonprofit consortium,
24 and shall not be the obligation of the county or state.

25 (g) Any nonprofit consortium contracting with a county pursuant
26 to this section shall ensure that it has a governing body that
27 complies with the requirements of subparagraph (B) of paragraph
28 (3) of subdivision (b) or an advisory committee that complies with
29 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

30 (h) Recipients of services under this section may elect to receive
31 services from in-home supportive services personnel who are not
32 referred to them by the public authority or nonprofit consortium.
33 Those personnel shall be referred to the public authority or
34 nonprofit consortium for the purposes of wages, benefits, and other
35 terms and conditions of employment.

36 (i) (1) Nothing in this section shall be construed to affect the
37 state's responsibility with respect to the state payroll system,
38 unemployment insurance, or workers' compensation and other
39 provisions of Section 12302.2 for providers of in-home supportive
40 services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of a public authority pursuant to paragraph (1) of subdivision (c), that are agreed to by that public authority in collective bargaining with the designated representative of the in-home supportive services personnel pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and transfer the deducted funds as directed in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(l) (1) The department may adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

1 these emergency regulations shall not be subject to the review and
2 approval of the Office of Administrative Law.

3 (2) Notwithstanding subdivision (h) of Section 11346.1 and
4 Section 11349.6 of the Government Code, the department shall
5 transmit these regulations directly to the Secretary of State for
6 filing. The regulations shall become effective immediately upon
7 filing by the Secretary of State.

8 (3) Except as otherwise provided for by Section 10554, the
9 Office of Administrative Law shall provide for the printing and
10 publication of these regulations in the California Code of
11 Regulations. Emergency regulations adopted pursuant to this
12 subdivision shall remain in effect for no more than 180 days.

13 (m) (1) In the event that a county elects to form a nonprofit
14 consortium or public authority pursuant to subdivision (a) before
15 the State Department of Health Care Services has obtained all
16 necessary federal approvals pursuant to paragraph (3) of
17 subdivision (j) of Section 14132.95, all of the following shall apply:

18 (A) Subdivision (d) shall apply only to those matters that do
19 not require federal approval.

20 (B) The second sentence of subdivision (h) shall not be
21 operative.

22 (C) The nonprofit consortium or public authority shall not
23 provide services other than those specified in paragraphs (1), (2),
24 (3), (4), and (5) of subdivision (e).

25 (2) Paragraph (1) shall become inoperative when the State
26 Department of Health Care Services has obtained all necessary
27 federal approvals pursuant to paragraph (3) of subdivision (j) of
28 Section 14132.95.

29 (n) (1) One year after the effective date of the first approval by
30 the department granted to the first public authority, the Bureau of
31 State Audits shall commission a study to review the performance
32 of that public authority.

33 (2) The study shall be submitted to the Legislature and the
34 Governor not later than two years after the effective date of the
35 approval specified in subdivision (a). The study shall give special
36 attention to the health and welfare of the recipients under the public
37 authority, including the degree to which all required services have
38 been delivered, out-of-home placement rates, prompt response to
39 recipient complaints, and any other issue the director deems
40 relevant.

1 (3) The report shall make recommendations to the Legislature
2 and the Governor for any changes to this section that will further
3 ensure the well-being of recipients and the most efficient delivery
4 of required services.

5 (o) Commencing July 1, 1997, the department shall provide
6 annual reports to the appropriate fiscal and policy committees of
7 the Legislature on the efficacy of the implementation of this
8 section, and shall include an assessment of the quality of care
9 provided pursuant to this section.

10 (p) (1) Notwithstanding any other provision of law, and except
11 as provided in paragraph (2), the department shall, no later than
12 January 1, 2009, implement subparagraphs (A) and (B) through
13 an all county letter from the director:

14 (A) Subparagraphs (A) and (B) of paragraph (2) of subdivision
15 (e).

16 (B) Subparagraph (B) of paragraph (5) of subdivision (e).

17 (2) The department shall, no later than July 1, 2009, adopt
18 regulations to implement subparagraphs (A) and (B) of paragraph
19 (1).

20 (q) The amendments made to paragraphs (2) and (5) of
21 subdivision (e) made by the act that added this subdivision during
22 the 2007–08 Regular Session of the Legislature shall only be
23 implemented to the extent that an appropriation is made in the
24 annual Budget Act or other statute, except for the amendments
25 that added subparagraph (D) of paragraph (2) of subdivision (e),
26 which shall go into effect January 1, 2009.

27 SEC. 23. Section 12305.86 of the Welfare and Institutions
28 Code is amended to read:

29 12305.86. (a) Effective October 1, 2009, a county shall
30 investigate the background of a person who seeks to become a
31 supportive services provider and who is not listed on the registry
32 of a public authority or nonprofit consortium pursuant to Section
33 12301.6. This investigation shall include criminal background
34 checks conducted by the Department of Justice pursuant to Section
35 15660.

36 (b) No later than July 1, 2010, the county shall complete a
37 criminal background check pursuant to subdivision (a) for a
38 provider who is providing in-home supportive services prior to
39 October 1, 2009, and who is not listed on a public authority or
40 nonprofit consortium registry, as a condition of the provider's

1 continued enrollment in the IHSS program. Criminal background
2 checks shall be conducted at the provider's expense.

3 (c) Upon notice from the Department of Justice that a
4 prospective or current provider has been convicted of a criminal
5 offense specified in Section 12305.81, the county shall deny or
6 terminate the applicant's request to become a provider of
7 supportive services to any recipient of the In-Home Supportive
8 Services program.

9 (1) If an applicant or provider is rejected as a result of
10 information contained in the *Department of Justice* criminal
11 ~~background report offender record information response~~, the
12 ~~applicant or provider individual~~ shall receive a copy of ~~his or her~~
13 ~~own criminal history record~~ *the response* from the Department of
14 Justice, as provided in Article 5 (commencing with Section 11120)
15 of Chapter 1 of Title 1 of Part 4 of the Penal Code, to review the
16 information for accuracy and completeness. The applicant or
17 provider shall be advised that if, upon review of his or her own
18 criminal history record, he or she finds the information to be
19 inaccurate or incomplete, the applicant or provider shall have the
20 right to submit a formal challenge to the Department of Justice to
21 contest the criminal background report *primary response recipient*.

22 (2) The department shall develop a written appeal process for
23 the current and prospective providers who are determined ineligible
24 to receive payment for the provision of services under the In-Home
25 Supportive Services program.

26 (3) ~~An applicant shall be informed of his or her right to a waiver~~
27 ~~of the fee for obtaining a copy of a criminal history record, and of~~
28 ~~how to submit a claim and proof of indigency, as required by~~
29 ~~Section 11123 of the Penal Code.~~

30 (d) Nothing in this section shall be construed to prohibit the
31 Department of Justice from assessing a fee pursuant to Section
32 11105 or 11123 of the Penal Code to cover the cost of furnishing
33 summary criminal history information.

34 (e) The department shall seek federal financial participation, to
35 the extent possible, to cover any costs associated with this section.

36 SEC. 24. Section 58 of Chapter 28 of the Third Extraordinary
37 Session of the Statutes of 2009 is repealed.

38 SEC. 58. ~~The Judicial Council shall consider the adoption of~~
39 ~~appropriate modifications to the Criminal Rules of Court, and of~~
40 ~~other judicial branch policies, procedures, and programs, affecting~~

1 ~~felony probation services that would support implementation of~~
2 ~~the evidence-based probation supervision practices described in~~
3 ~~Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of~~
4 ~~the Penal Code.~~

5 SEC. 25. Any section of any other act enacted by the
6 Legislature during the 2010 calendar year that takes effect on or
7 before January 1, 2011, and that amends, amends and renumbers,
8 adds, repeals and adds, or repeals a section that is amended,
9 amended and renumbered, added, repealed and added, or repealed
10 by this act shall prevail over this act, whether that act is enacted
11 prior to or subsequent to the enactment of this act.

12 SEC. 26. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.